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LAWS, JOINT RESOLUTIONS,
AND MEMORIALS,

PASSED AT THE

1856

SECOND SESSION OF THE LEGISLATIVE ASSEMBLY.

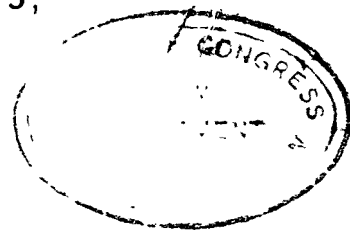
OF THE

TERRITORY OF NEBRASKA.

BEGUN AND HELD AT OMAHA CITY, N. T.

DECEMBER 16th, A. D. 1855;

TOGETHER WITH



The Constitution of the United States

AND THE ORGANIC LAWS.

PRINTED AND PUBLISHED BY AUTHORITY.

OMAHA CITY, N. T.

HADLEY D. JOHNSON, PUBLIC PRINTER FOR THE TERRITORY.

1856.

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CERTIFICATES.

OMAHA CITY, N. T., MAY 3d, 1856.

I hereby certify that I have, this day, delivered to HADLEY D. JOHNSON, Territorial Printer, correct copies of all the Laws passed by the Legislative Assembly of Nebraska Territory, at its Second Session, begun and held at Omaha City, December 16th, 1855.

T. B. CUMING,
Secretary of Nebraska Territory.

I hereby certify that the following are true and correct copies of the Laws passed by the Legislative Assembly of Nebraska Territory, at its Second Session, begun and held at Omaha City, December 16th, 1855, as delivered to me by T. B. CUMING, Secretary of Nebraska Territory.

HADLEY D. JOHNSON,
Public Printer for Nebraska Territory.

CONSTITUTION

OF THE

UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1.

1. All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Legislative power.

SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

House of Representatives and qualifications of electors,

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

and of Representatives.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not

Apportionment of Representatives.

Enumeration.	taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The
Ratio of representation.	number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative ; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three ; Massachusetts eight ;
First apportionment	Rhode Island and Providence Plantations, one ; Connecticut, five ; New York, six ; New Jersey, four , Pennsylvania, eight ; Delaware, one ; Maryland, six ; Virginia, ten ; North Carolina, five , South Carolina, five ; and Georgia, three.
Vacancies.	4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.
Speaker of the House	5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

The Senate— each Senator a vote	1. The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six years ; and each senator shall have one vote.
Senators class- ed.	2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall
A third of the seats vacated every 2 years	be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one-third may be chosen
Vacancies.	every second year ; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.
Qualification of Senators.	3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.
President of the Senate	4. The vice-president of the United States shall be president of the Senate : but shall have no vote, unless they be equally divided.
Officers.	5. The Senate shall choose their other officers, and also a president, <i>pro tempore</i> , in the absence of the vice-president, or when he shall exercise the office of president of the United States.
Impeachments.	6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside ; and no person shall be convicted without the concurrence of two-thirds of the members present.
And extent of judgment in cases.	7. Judgment, in cases of impeachment, shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States :
Party liable ac- cording to law.	but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State, by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators. Elections, how regulated.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day. Meetings of Congress.

SECTION 5.

1. Each house shall be the judge of the election, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide. To judge of the election of its members
Quorum

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. Rules

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal. Journals.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to other place than that in which the two houses shall be sitting. Adjournment

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. Compensation
Privilege.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house, during his continuance in office. Concerning the holding of offices.

SECTION 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills. Revenue bills.

Power and duty
of the President
in relation to
bills

Proceedings on
bills returned by
the President

Joint resolutions,
except for
adjournment, to
receive the same
sanction as
bills

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States ; if he approve, he shall sign it ; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections, at large, on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays ; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively.— If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return ; in which case, it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States ; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

Powers of Congress
relative to
taxes.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises ; to pay the debts, and to provide for the common defence and general welfare of the United States ; but all duties, imposts, and excises shall be uniform throughout the United States :

Loans.

2. To borrow money on the credit of the United States :

Commerce.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes :

Naturalization.

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States :

Money.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

Counterfeiting.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

Post-offices.

7. To establish post offices and post roads :

Science.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries :

Tribunals.

9. To constitute tribunals inferior to the Supreme Court. To define and punish piracy and felonies committed on the high seas and offences against the law of nations :

War.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

11. To raise and support armies ; but no appropriation of money to that use, shall be for a longer term than two years : Armies
12. To provide and maintain a navy : Navy.
13. To make rules for the government and regulation of the land and naval forces : Land and Naval forces
14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions : Militia.
15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.
16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings :—and Legislation over a District, &c
17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. Laws necessary for the execution of their powers

SECTION 9.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. Of the importation of certain persons, &c.
2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. Writ of Habeas Corpus
3. No bill of attainder or ex post facto law, shall be passed. Attainder, &c
4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. Direct taxes.
5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another ; nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another. Of commerce from the States &c.
6. No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. Of expenditures
7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state. No nobility created, and no presents accepted by U. S. officers, &c.

SECTION 10.

Powers prohibited to the individual states.

1. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold or silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Powers which the States can exercise only under the sanction of Congress.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of Congress. No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1.

Executive power.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Electors of President and Vice President.

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Meeting of the Electors.

Their proceedings.

3. The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed to the seat of government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number is a majority of the whole number of electors appointed: and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President: and if no person have a majority, then from the five highest on the list, the said house shall, in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-

thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.*

[*Annulled see amendments, art. 12.]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

Time of choosing electors.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifications for President

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

When his duties devolve on the Vice President, &c.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive during that period any other emolument from the United States or any of them.

Compensation.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation :

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Oath of the President.

SECTION 2.

1. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

Powers of the President.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of

His powers-with the advice and consent of the Senate.

Of appointment of inferior officers.

such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

President may
fill vacancies.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECTION 3.

Duties of President.

1. He shall from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

1. The President, Vice President, and all Civil Officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1.

Judicial power.

1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

Its Extent.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors; or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects.*

[*Restriction by
article 11, of
amendments.]

jurisdiction of
supreme Court.

2. In all cases affecting ambassadors, other public ministers or consuls, and those in which a State shall be a party, the Supreme

Court shall have original jurisdiction, In all the other cases, before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed. Trial of crimes.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained. Its punishment.

ARTICLE IV.

SECTION 1.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof. Faith to be given to the acts, &c., of States.

SECTION 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. Reciprocity of citizenship.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. Criminals to be delivered up.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall; in consequence of any law or regulation therein, be discharged from such service or labor: but shall be delivered upon claim of the party to whom such service or labor may be due. Also runaway slaves, &c.

SECTION 3.

1. New States may be admitted by the Congress into this Union: but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the Admission of new States.

junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

Power of Congress over Territory, &c

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4.

Guarantee and protection of each State.

The United States shall guaranty to every State in this Union, a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V.

Modes of amending the Constitution.

The Congress whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. *Provided*, That no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

Debts assumed.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

The Supreme law of the land.

2. This Constitution, and the Laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land and the judges in every State shall be bound thereby; anything in the constitution or laws of any State to the contrary notwithstanding.

Representatives &c., to support this Constitution

3. The Senators and Representatives, before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

No religious test.

ARTICLE VII.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same. Ratification of
nine States suffi-
cient.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEO. WASHINGTON, *President,*
and Deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

Attest,

DELAWARE.

George Reed,
Gunning Bedford, Jr.,
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.

John Rutledge,
Chas. Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Religion,
speech, the
press, and the
right to petition.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

People may
keep arms.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

Quartering of
soldiers.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

Security against
unreasonable
searches and
seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

Presentment or
indictment in
criminal cases.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in a case arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Right of private
property.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Rights of the
accused.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Right of trial by
jury.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Of bail, fines,
and punish-
ments.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights enumer-
ated not to dis-
parage those re-
tained.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Reserved pow-
ers.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Restriction of
judicial powers.

ARTICLE XII.

1. The electors shall meet in their respective States and vote, by ballot, for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number

Mode of elect-
ing president
and vice-presi-
dent of the Uni-
ted States.

of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum, for that purpose, shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

When citizen-
ship shall be for-
feited.

ORGANIC LAW.

AN ACT

TO ORGANIZE THE TERRITORIES OF

NEBRASKA AND KANSAS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to-wit: beginning at a point in the Missouri River where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the Territory of Minnesota; thence southward on said boundary to the Missouri river; thence down the main channel of said river to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Nebraska; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their Constitution may prescribe at the time of their admission; *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: *Provided further,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Nebraska, until said tribe shall signify their assent to the President of United States to be included within the said Territory of Nebraska, or to affect the authority of the government of the United States to make any regulations respecting such Indians,

Temporary government for territory of Nebraska established.

Boundaries.

Admitted as a State or States with or without slavery. Power to divide said Territory, or to attach portion of it to a State or Territory, reserved.

Proviso.

Rights of Indians in said territory not impaired.

United States retain their present authority over said Indians.

their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.

SEC. 2. And be it further enacted, That the executive power and authority in and over said Territory of Nebraska shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offences against the laws of said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

The executive power vested in a governor, his term of office powers, duties, and emoluments.

SEC. 3. And be it further enacted, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for five years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year to the President of the United States, and two copies of the laws to the President of the Senate and to the speaker of the House of Representatives, to be deposited in the libraries of Congress; and in case of the death, removal, resignation or absence of the Governor from the Territory, the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

Secretary—his powers & duties.

In case of death, resignation, removal or absence of governor, the secretary to act as governor.

SEC. 4. And be it further enacted, That the legislative power and authority of said Territory shall be vested in the Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall, at its first session, consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: Provided, That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the Territory, representation in the ratio of its qualified voters as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county

Legislative power—how vested. Legislative Assembly to consist of a council and House of Representatives.

Number of councillors and representatives.

Number of councillors and representatives limited.

Apportionment of representation.

Census to be taken : when and how.

How the first election shall be conducted, and who declared elected.

Proviso in case of vacancy or no choice.

Subsequent elections to be determined by the Assembly.

Proviso as to terms of sessions of Legislative Assembly.

Qualifications of voters.

Proviso.

Who have the right of suffrage and of holding office.

Further proviso.

Legislative power of the Territory defined.

or counties for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census, or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory, to be taken by such persons and in such mode as the Governor shall designate and appoint ; and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct ; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the Council, shall be declared by the Governor to be duly elected to the Council ; and the persons having the highest number of legal votes for the House of Representatives, shall be declared by the Governor to be duly elected members of said house ; Provided, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election ; and the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor shall appoint : but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly : Provided, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 5. And be it further enacted, That every free white male inhabitant above the age of twenty-one years, who shall be an actual resident of said Territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory ; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly : Provided, That the right of suffrage and of holding office shall be exercised only by citizens of the United States and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States and the provisions of this act : And provided further, That no officer, soldier, seaman or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said Territory, by reason of being on service therein.

SEC. 6. And be it further enacted, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act ; but no law shall be passed interfering with

the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory shall, before it become a law, be presented to the Governor of the Territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Assembly, by adjournment, prevents its return, in which case it shall not be a law.

SEC. 7. And be it further enacted, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Nebraska. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for; and in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly; and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

SEC. 8. And be it further enacted, That no member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, except Postmasters, shall be a member of the Legislative Assembly, or hold any office under the government of said Territory.

SEC. 9. And be it further enacted, That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and they shall hold their offices during the period of four years, and until their successor shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court, at such times and places as may

Governor's veto.

Bills may be passed by two thirds of each house notwithstanding.

Bills to become a law unless returned within three days.

How township, district and county officers are to be appointed.

No member of Legislature shall hold certain offices during term of his election or for one year thereafter. Officers of U. S., except post masters, not to be members of the assembly.

The judicial power—in whom vested and how to be exercised.

Three judicial districts formed.

Jurisdiction
of courts and of
justices of the
peace.

Proviso.

Each district
court appoint
its clerk.

Writs of error
&c. allowed.

Supreme
court appoint
its own clerk.

Writs of error
and appeals
from Supreme
Court when ta-
ken to Supreme
Court of United
States.

Exception .

Proviso as to
fugitives from
justice and from
labor.

1793, ch. 7.

1850, ch. 60.

Habeas corpus.

be prescribed by law ; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law : Provided, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars ; and the said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court, or the Judge thereof, shall appoint its clerk, who shall also be the register in Chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said District Courts to the Supreme Court, under such regulations as may be prescribed by law ; but in no case removed to the Supreme Court, shall trial by jury be allowed in said Court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said Supreme Court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars ; except only that in all cases involving title to slaves, the said writs of error, or appeals shall be allowed and decided by the said Supreme Court, without regard to the value of the matter, property or title in controversy ; and except also that a writ of error or appeal shall also be allowed to the Supreme Court of the United States, from the decision of the said Supreme Court created by this act, or of any Judge thereof, or of the district courts created by this act, or of any Judge thereof, upon any writ of habeas corpus, involving the question of personal freedom : Provided, that nothing herein contained shall be construed to apply to or affect the provisions to the “ act respecting fugitives from justice, and persons escaping from the service of their masters,” approved February twelfth, seventeen hundred and ninety-three, and the “ act to amend and supplementary to the aforesaid act,” approved September eighteen, eighteen hundred and fifty ; and each of the said District Courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and Laws of the United States as is vested in the Circuit and District Courts of the United States ; and the said Supreme and District Courts of the said Territory, and the respective judges thereof shall and may grant writs of habeas corpus in all cases in which the same are granted by the Judges of the United States in the District of Columbia ; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeal in all such cases shall be made to the Supreme

Court of said Territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the District Courts of Utah Territory now receive for similar services.

Fees of clerks

SEC. 10. And be it further enacted, That the provisions of an act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelve, seventeen hundred and ninety-three, and the provisions of the act entitled "An act to amend, and supplementary to, the aforesaid act," approved September eighteen, eighteen hundred and fifty, be, and the same are hereby, declared to extend to and be in full force within the limits of said Territory of Nebraska.

The Acts
1793, ch. 7,
1850, ch. 60,
extended over
this Territory.

SEC. 11. And be it further enacted, That there shall be appointed an Attorney for said Territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Utah. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as Circuit and Districts Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the District Court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

The attorney
and marshal,
tenure of their
offices and com-
pensation.

SEC. 12. And be it further enacted, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the District Judge or some Justice of the Peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said Secretary among the Executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall re-

The Governor,
Secretary, Chief
Justice, and as-
sociate Justices,
attorney and
marshal — how
to be appointed.

Each to take
official oaths,
&c.

Salary of Governor.

Salary of Chief Justice and Associate Judges. Secretary's salary.

Compensation of members of the Legislative Assembly.

Pay of certain officers of each house.

Proviso as to number of sessions annually.

Contingent expenses provided for.

Expenditures of Legislative Assembly limited.

Legislative Assembly to hold its first session as directed by the Governor.

Seat of government.

A delegate to be elected to the Congress of the United States.

ceive an annual salary of two thousand five hundred dollars. The Chief Justice and Associate Justices shall each receive an annual salary of two thousand dollars. The Secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the Treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route: and an additional allowance of three dollars shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, and assistant clerk, a sergeant-at-arms, and doorkeeper, may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers, three dollars per day, during the session of the Legislative Assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the Legislature annually, unless, on an extraordinary occasion, the Governor shall think proper to call the Legislature together. There shall be appropriated, annually, the usual sum, to be expended by the Governor, to defray the contingent expenses of the Territory, including the salary of a clerk of the Executive Department; and there shall also be appropriated, annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall, semi-annually, account to the said Secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress, making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 13. And be it further enacted, That the Legislative Assembly of the Territory of Nebraska shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly.

SEC. 14. And be it further enacted, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights

and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives, but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first elected shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding the elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected; and a certificate thereof shall be given accordingly. That the Constitution, and all Laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void: it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, that nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

SEC. 15. And be it further enacted, That there shall hereafter be appropriated, as has been customary for the Territorial governments, a sufficient amount, to be expended under the direction of the said Governor of the Territory of Nebraska, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government for the use of the Governor, Legislative Assembly, Judges of the Supreme Court, Secretary, Marshal, and Attorney of said Territory, and such other persons, and under such regulations as shall be prescribed by law.

SEC. 16. And be it further enacted, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections number sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 17. And be it further enacted, That until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts; and also appoint the times and places for holding courts in the several coun-

The Constitution and applicable laws of the United States shall be in force in the Territory except the 8th section of ch. 22, declared void.

The intent of this act concerning slavery.

Proviso as to revival of laws concerning slavery.

1820, ch. 22.

Appropriation for public buildings.

Reservation for schools.

Judicial districts, how defined.

ties or subdivisions in each of said Judicial Districts by proclamation, to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such Judicial Districts; and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Officers appointed by President to give security for moneys received in certain cases.

SEC. 18. And be it further enacted, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of Nebraska, who, by virtue of the provisions of any law now existing, or which may be enacted during the the present Congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security, at such time and place, and in such manner, as the Secretary of the Treasury may prescribe.

Temporary government for Territory of Kansas.

Boundaries.

SEC. 19. And be it further enacted, That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to-wit, beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their Constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: *Provided, further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Kansas, until said tribe shall signify their ascent to the President of the United States to be included within the said Territory of Kansas, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise which it would have been competent to the government to make if this act had never passed.

Admitted as State or States with or without slavery.

Power to divide said Territory or to attach part of it to a State or Territory reserved.

Rights of Indians in said Territory not impaired.

United States retain all their present authority over said Indians.

SEC. 20. And be it further enacted, That the executive power and authority in and over said Territory of Kansas shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offences against the laws of said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

The executive power vested in a Governor & his tenure of office, powers, duties and emoluments.

SEC. 21. And be it further enacted, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for five years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his Executive Department; he shall transmit one copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, to be deposited in the libraries of Congress: and, in case of the death, removal, resignation, or absence of the Governor from the Territory, the Secretary shall be, and is hereby, authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

Secretary, his powers and duties.

When secretary is to act as Governor.

SEC. 22. And be it further enacted, That the legislative power and authority of said Territory shall be vested in the Governor and Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualification of voters, as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall, at its first session, consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of Representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters as near as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected, respectively. Previous to the first election, the Governor shall cause a cen-

Legislative power how vested.

Legislative assembly to consist of a Council and House of Representatives.

Number of councillors and representatives.

Number of councillors and representatives limited.

Apportionment of representation.

Census to be taken when and how?

How the first election shall be conducted; who declared elected.

Proviso in case of vacancy or no choice.

Subsequent elections to be determined by the Assembly.

Proviso as to terms of sessions of the Legislative Assembly.

Qualifications of voters.

Proviso. Who have the right of suffrage and of holding office.

Further proviso.]

Legislative power of the territory defined

cus, or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory, to be taken by such persons and in such mode as the Governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The person having the highest number of legal votes in each of said Council Districts for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives, shall be declared by the Governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election; And the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session which may continue sixty days.

SEC. 23. And be it further enacted, That every free white male inhabitant above the age of twenty-one years, who shall be an actual resident of said Territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the Constitution of the United States and the provisions of this act: And, *provided further*, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said Territory by reason of being on service therein.

SEC. 24. And be it further enacted, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act: but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other

property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory shall, before it become a law, be presented to the Governor of the Territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Assembly, by adjournment, prevent its return, in which case it shall not be a law.

Governors veto.

Bill may be passed by two-thirds of each house notwithstanding.

Bill to be a law unless returned by governor within three days.

How townships, districts, and county officers are to be appointed.

SEC. 25. And be it further enacted, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Kansas. The Governor shall nominate, and, by and with the consent of the Legislative Council, appoint all officers not herein otherwise provided for; and, in the first instance, the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly; and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

No member of Legislature shall hold certain offices during the term of his election and for one year after.

SEC. 26. And be it further enacted, That no member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

Officers of the United States, except postmasters, not to be members of the Assembly.

SEC. 27. And be it further enacted, That the judicial power of said Territory shall be vested in a Supreme Court, district courts, probate courts, and in justices of the peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually; and they shall hold their offices during the period of four years, and until their successor shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned

The judicial power in whom vested and how to be exercised

Three judicial districts formed.

Jurisdiction
of courts, and of
justices of the
peace.

Proviso.

Clerk of dis-
trict court how
appointed.

Writs of error
&c. allowed.

Clerk of Su-
preme Court
how appointed.

Writs of error
and appeal from
Supreme Court,
when taken to
Supreme Court
of United States.

Exceptions. §

Proviso as to
fugitives from
justice and from
labor.

1793 ch 7.
1850 ch 60.

Certain causes
to take prece-
dence.

Fees of clerk.

them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court, or the Judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court shall trial by jury be allowed in said court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by said supreme court, without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall also be allowed to the Supreme Court of the United States, from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus, involving the question of personal freedom; *Provided*, That nothing herein contained shall be construed to apply to or affect the provisions of the "act respecting fugitives from justice, and persons escaping from the service of their master," approved February twelfth, seventeen hundred and ninety-three, and the "act to amend and supplementary to the aforesaid act," approved September eighteenth, eighteen hundred and fifty; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the Circuit and District Courts of the United States; and the said supreme and district courts of the said Territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as may be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws, and writs of error and appeal in all such cases shall be made to the supreme court of said Territory, the same as in other cases. The said clerk shall receive the same fees in all

such cases, which the clerks of the district courts of Utah Territory now receive for similar services.

SEC. 28. And be it further enacted, That the provisions of the act entitled "An act respecting fugitives from justice and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the provisions of the act entitled "An act to amend, and supplementary to, the aforesaid act," approved September eighteenth, eighteen hundred and fifty, be, and the same are hereby declared to extend to and be in full force within the limits of the said Territory of Kansas.

The Acts 1793, ch 7, and 1850, ch 60, to be extended over this Territory.

SEC. 29. And be it further enacted, That there shall be appointed an attorney for said Territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Utah. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the District Court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

The Attorney and Marshal, tenure of their office and compensation.

SEC. 30. And be it further enacted, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal, shall be nominated and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge or some justice of the peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars. The Chief Justice and

The Governor Chief Justice, Associate Justices, Attorney and Marshal—how to be appointed.

Oaths.

Salary of Governor.

Salary of
Chief Justice
and associate
justices.

Secretary's
salary.

Compensation
of members of
the Legislative
Assembly.

Pay of certain
officers of each
house.

Proviso as to
number of ses-
sions annually.

Contingent
expenses provi-
ded for.

Expenditures
of Legislative
Assembly limit-
ed.

Seat of gov-
ernment at Fort
Leavenworth.

Public build-
ings used as
governor directs

A delegate to
be elected to the
Congress of the
United States.

Associate Justices shall receive an annual salary of two thousand dollars. The Secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the Treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going and returning from the said sessions, estimated according to the nearest usually traveled route; and an additional allowance of three dollars shall be paid to the presiding officer of each house, for each day he shall so preside. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door-keeper, may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the Legislative Assembly; but no other officer shall be paid by the United States: Provided, That there shall be but one session of the Legislature annually, unless, on an extraordinary occasion, the Governor shall think proper to call the Legislature together. There shall be appropriated, annually, the usual sum, to be expended by the Governor, to defray the contingent expenses of the Territory, including the salary of a clerk of the Executive Department, and there shall also be appropriated, annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the Treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 31. And be it further enacted, That the seat of government of said Territory is hereby located temporarily at Fort Leavenworth; and that such portions of the public buildings as may not be actually used and needed for military purposes, may be occupied and used, under the direction of the Governor and Legislative Assembly, for such public purposes as may be required under the provisions of this act.

SEC. 32. And be it further enacted, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives, but the delegate first elected shall hold his seat

only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution, and all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Kansas as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth of March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

SEC. 33. And be it further enacted, That there shall hereafter be appropriated, as has been customary for the territorial government, a sufficient amount, to be expended under the direction of the said Governor of the Territory of Kansas, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government for the use of the Governor, Legislative Assembly, Judges of the Supreme Court, Secretary, Marshal, and Attorney of said Territory, and such other persons, and under such regulations, as shall be prescribed by law.

SEC. 34. And be it further enacted, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 35. And be it further enacted, That, until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts; and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify

The constitution and applicable laws of the United States to be extended over this territory, except 8th section of ch 22, 1820, which is declared void.

The intent of this act concerning slavery.

Proviso as to the revival of laws concerning slavery.
1820, ch 22.

Appropriations for public buildings and library.

Lands to be surveyed — how to be disposed of.

Reservation for schools.

Judicial districts—how defined.

such judicial districts, and assign the judges, and alter the times and places of holding the courts as to them shall seem proper and convenient.

Officers appointed by the President to give security for moneys received in certain cases.

SEC. 36. And be it further enacted, That, all officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of Kansas, who, by virtue of the provisions of any law now existing, or which may be enacted during the present Congress, are required to give security for moneys that may be entrusted with them for disbursement, shall give such security, at such time and place, and in such manner as the Secretary of the Treasury may prescribe.

Not to interfere with the treaties, laws, &c., made with the Indians by the United States.

SEC. 37. And be it further enacted, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territories embraced within this act, shall be faithfully and rigidly observed, notwithstanding anything contained in this act; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the President of the United States may, at his discretion, change the location of the office of superintendent.

PART FIRST.

CODE OF NEBRASKA.

CHAPTER I.

AN ACT for Revising, Consolidating, and preparing a General Code for the Territory of Nebraska.

WHEREAS it is expedient that the General Statutes of this Territory should be consolidated and arranged in appropriate chapters and sections, that omissions should be supplied and defects amended, and that the whole should be rendered plain, concise, and intelligible, therefore, Be it enacted by the Council and House of Representatives of the Territory of Nebraska, in manner following, that is to say :

Preamble

CHAPTER II.

THE GENERAL ASSEMBLY.

SEC. 1. The General Assembly of this Territory shall meet on the first Monday of January, in the year A. D. 1857, and on the first Nonday in January annually thereafter.

Time of meeting.

SEC. 2. At two o'clock in the afternoon of the day of the meeting of the General Assembly, some person claiming to be elected a member, shall call the House to which he belongs, to order, and the persons present claiming seats in that House as members, shall elect a clerk for the time being.

May elect clerk.

SEC. 3. The clerks of each House shall file the certificates presented by members, each for his own House, and make a roll of the members who thus appear to be elected; and the persons thus appearing to be elected members, shall proceed to elect such other officers as may be required for the time being.

Election of other officers.

SEC. 4. When the Houses are temporarily organized, they shall elect a committee of five on the part of the House, and three on the part of the council, by ballot, which committee shall examine and report upon the credentials of those claiming to be elected members of their respective houses, and when such report is made, those reported as elected, shall proceed to the permanent organi-

Joint committee on credentials.

zation of their respective Houses, and each house shall be the sole judge of the election returns and qualifications of its own members.

Oaths.

SEC. 5. Any member may administer oaths in the House of which he is a member, and while acting on a committee, may administer oaths, on the business of such committee.

SEC. 6. No member of the General Assembly shall be questioned in any other place, for any speech or words spoken in debate, in either House.

Punishment
for contempt.

SEC. 7. Each House of the General Assembly has power and authority to punish as a contempt, by fine and imprisonment, or either of them, the offense—of knowingly arresting a member in violation of his privilege; by assaulting or threatening to assault a member, or threatening to do him any harm, in person or property, for anything said or done in either house, as a member thereof; of attempting, by menace or other corrupt means, to control, or influence a member in giving his vote, or to prevent his giving it; of disorderly or contemptuous conduct, tending to disturb its proceedings; of refusing to attend, or to be sworn, or to be examined as a witness before either House or a committee when duly summoned; of assaulting, or preventing any person going to either House or its committee by order thereof, knowing the same; of rescuing or attempting to rescue any person arrested by order of either house, knowing such arrest; and of knowingly injuring any officer of either House in the discharge of his duties as such.

SEC. 8. Imprisonment for contempt of either House, shall not be for more than six hours, and shall be in the jail of the county in which the General Assembly may then be sitting, or if there be no jail, then in one of the nearest county jails.

Fine not to
exceed \$50.

SEC. 9. Should a fine be imposed for any offense in the second preceding section, it shall not exceed fifty dollars.

Fine and im-
prisonment how
effected.

SEC. 10. Fines and imprisonment shall be only by virtue of an order of the [proper House, entered on its journals, stating the grounds therefor. Imprisonment shall be effected by a warrant under the hand of the presiding officer, of the time being, of the house ordering it, countersigned by the clerk of the house, running in the name of the Territory, and directed to the sheriff of the proper county; and under such warrant, the officer of the House, sheriff, and jailor will be authorized to arrest and detain the person.

Fines, how
collected.

SEC. 11. Fines shall be collected by virtue of a similar warrant, directed to any proper officer of the county in which the offender has property, and executed in the same manner as executions for fines issued by courts of justice, and the proceeds shall be paid into the Territorial Treasury.

Punishment
no bar.

SEC. 12. Punishment for contempt as in this chapter provided, is no bar to any other proceeding, civil or criminal, for the same offense.

Approved January 26, 1856.

CHAPTER III.

CORPORATIONS.

SEC. 1. Any number of persons may be associated and incorporated for the transaction of any lawful business, including the construction of canals, railways, bridges, and other works of internal improvement.

Association.

SEC. 2. Every corporation as such, has power

Corporate powers.

1. To have succession by its corporate name ;
2. To sue and be sued, to complain, and defend in courts of law and equity ;
3. To make and use a common seal, and alter the same at pleasure ;
4. To hold personal estates, and all real estate as may be necessary for the legitimate business of the corporation ;
5. To render the interest of the stockholders transferable ;
6. To appoint such subordinate officers and agents, as the business of the corporation shall require, and to allow them a suitable compensation therefor ;
7. To make by-laws, not inconsistent with any existing law, for the management of its affairs.

SEC. 3. The powers enumerated in the preceding section, shall vest in every corporation in this Territory, whether the same be formed without, or by Legislative enactment, although they may not be specified in its charter, or as articles of association.

Powers, in whom vested.

SEC. 4. Every corporation, previous to the commencement of any business, except its own organization, when the same is not formed by legislative enactment, must adopt articles of incorporation, and have them recorded in the office of the Register of Deeds, of the county or counties in which the business is to be transacted, in a book kept for that purpose.

Articles of incorporation to be recorded.

SEC. 5. Corporations for the construction of works of internal improvement, must also file in the office of the Secretary of the Territory, a copy of their articles of association, and the same shall be recorded in a book kept for that purpose.

Copy to be filed with Secretary of Territory.

SEC. 6. The articles of incorporation must fix the highest amount of indebtedness, or liability, to which the corporation shall, at any one time, be subject, which must in no case, except in that of the risk of Insurance Companies, exceed two-thirds of its capital stock.

Indebtedness.

SEC. 7. If any corporation, hereafter created by the Legislature, shall not organize within one year after its incorporation, its corporate powers shall cease.

Time of organization.

SEC. 8. Notice must be published in some newspaper, near the principal place of business, for four weeks.

Notice to be published.

SEC. 9. Such notice must contain

Notice to contain.

- 1st. The name of the corporation ;
- 2d. The principal place of transacting its business ;
- 3d. The general nature of the business to be transacted ;
- 4th. The amount of capital stock authorized, and the time and conditions on which it is to be paid in ;

- 5th. The time of commencement, and termination of the corporation ;
- 6th. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself, and
- 7th. By what officers the affairs of the corporation are to be conducted.

Time of commencing business.

SEC. 10. Any corporation formed without legislative enactment, may commence business as soon as its articles of incorporation are filed with the Registers of deeds of the counties, as required by this act, and shall be valid, if a copy of its articles be filed in the office of the Secretary of the Territory, and the notice required, be published within four months from the time of filing such articles in the Register's office.

Change.

SEC. 11. Every change, in any of the above matters shall be recorded, and published in the same manner as the original articles are required by law.

Dissolution.

SEC. 12. No corporation can be dissolved by the members thereof, except by consent of two-thirds of all its members; which consent must be entered on its records, unless a different rule has been adopted in its articles of incorporation.

Copy of bye laws to be posted.

SEC. 13. A copy of the By-Laws of the corporation, with the names of all the officers appended thereto, must be posted in some conspicuous place, at the places of doing business, subject to public inspection.

Amount of debt.

SEC. 14. Every corporation hereafter created, shall give notice annually, in some newspaper, printed in the county, or counties, in which the business is transacted; and in case there is no newspaper printed therein, then in the nearest paper in the Territory, the amount of all the existing debts of the corporation, which notice shall be signed by the president, and a majority of the directors; and if any corporation, shall fail to do so, all the stockholders of the corporation shall be jointly and severally liable for all the debts of the corporation, then existing, and for all that shall be contracted before such notice is given.

May convey land.

SEC. 15. It shall be lawful for any corporation to convey lands by deed, sealed by the common seal of said corporation, and signed by the president or presiding officer of the board of directors of the corporation; and such deed when acknowledged by such officer to be the act of the corporation or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the register's office of the county in which the lands lie in like manner as other deeds.

May sue.

SEC. 16. All corporations may sue for, and recover from their respective members in any Court of competent jurisdiction all arrears or other debts due, or other demands, which now are, or hereafter may, be owing to them, in like manner as they might sue for and recover the same from any indifferent person who might be a member; any law, usage, or custom, to the contrary notwithstanding.

Property liable for debts.

SEC. 17. If any corporation fail to comply substantially with the provisions of this charter, in relation to giving notice, and other requisitions of organization, the property of all the stockholders shall be liable for the corporate debts.

SEC. 18. If any deception be practiced, by any corporation upon the public or individuals, in relation to its means, or liabilities, all those engaged in such deception, shall be liable to a fine not exceeding five hundred dollars; and any person injured by such deception, may recover double the amount of damages he may have sustained by reason of the same, in any court having jurisdiction of the amount claimed.

Penalties.

SEC. 19. A division of the funds of a corporation for other purposes than those mentioned in the act granting the Charter, and the payment of dividends which have insufficient fund to meet the liabilities of the corporation, shall be deemed a violation of the provisions of this chapter, and subject those engaged therein to the penalties herein prescribed.

Dividends.

SEC. 20. Any violation of the provisions of this chapter, shall cause a forfeiture of all the privileges conferred by the same, and the court may proceed to close the affairs of the corporation, by an information for that purpose.

Forfeiture.

SEC. 21. Corporations whose charters expire by their own limitation, or by the voluntary act of the stockholders, may continue to act for [the] purpose of closing their business, but for no other purpose.

Expiration of charter.

SEC. 22. No body of men acting as a corporation under the provisions of this chapter, shall be permitted to set up the want of legal organization as a defence to any action brought against them, as a corporation; nor shall any person sued on a contract made with such corporation, or for an injury to the property of such corporation, be permitted to set up the want of legal organization in defence of such action.

Defence to action.

SEC. 23. Actions against corporations may be brought in any county in which any of the business of the corporation shall be transacted, and service of the original process or notice in such action may be served on the president or other chief officer found in the county, or, if not found in the county, then on the chief clerk, treasurer, or secretary, or in the absence or want of these officers, then on any director or manager of such corporation; and if none of the officers above mentioned be found in the county, then on the person who acted last as president, or as any of the other officers enumerated in this section in the order that they are so enumerated, if they be found in the county, and if the officer having the process shall return the same not served, and it be made to appear to the court that such process cannot be served, the court shall order a notice to be given to the defendants to appear and answer to said action, on, or before the first day of the next term of said court, which notice shall be published in some newspaper printed in this Territory, for six weeks, the last insertion to be at least four weeks before the first day of the term of the court, at which he is requested to appear.

Actions, how brought.

SEC. 24. Notice given by publication as prescribed in the preceding section, and due proof thereof made, shall have the same effect as if served personally, and judgments recovered in consequence thereof, shall be a lien on all the real estate belonging to such corporation within this Territory.

Notice by publication.

SEC. 25. When an execution shall be issued against any cor-

Execution,
how collectable.

poration, the officer to whom the same is delivered shall levy the same upon the goods, lands, and tenements of said corporation, if any be found whereon to levy the same, if no property be found, or the property found be not sufficient to satisfy the execution, the officer shall serve upon such debtors of the company as garnishees, as the plaintiff, his agent or attorney, shall direct in writing to appear at the next [term] of the court, to answer such interrogations as may be propounded to him touching his indebtedness to the corporation, and proceeding under this chapter shall perform as near as may be to garnisheements in ordinary cases.

Fines and forfeitures.

SEC. 26. All fines and forfeitures arising under the provisions of this act, shall be paid into the Territorial treasury for the benefit of the Common Schools.

Approved, January 25th, 1856.

CHAPTER IV.

INCORPORATION OF TOWNS.

Petition.

SEC. 1. By [If] a majority of the taxable inhabitants of any town within this territory, shall present a petition to the *commissioners of the same county* in which said town is situated, praying that they may be incorporated, and a police established for their local government, designating the name they wish to assume, and if such commissioners shall be satisfied that a majority of the taxable inhabitants of such town have signed the petition, they may declare the town incorporated, and thenceforth the inhabitants within such bounds shall be a body politic and corporate, by the name and style of the town of — (naming it), and they and their successors shall be known by that name in law, and have perpetual succession, sue and be sued, defend and be defended, in all courts of law and equity, and may grant, purchase, hold, and receive property, both real and personal, within such town, and lease, sell, and dispose of the same for the benefit of the town, and may have a common seal, and may alter the same at pleasure.

Powers.

Corporate powers.

SEC. 2. The corporate powers of every town so incorporated shall be vested in a board of ~~trustees~~, to consist of five members, to be elected by the qualified voters residing within such town.

Trustees.

SEC. 3. The said commissioners, when they declare a town incorporated, shall appoint five suitable persons, eligible according to this chapter, for trustees for such town, and they shall hold their offices until their successors are elected and qualified; and the election for trustees shall be held on the first Monday in May annually, and no person shall be eligible to the office of trustee who shall not have attained the age of twenty-one years, who shall not be an inhabitant of the town at the time of his election, and who shall not be a free, white male citizen of the United States, and they shall hold their office for one year, and until their successors are elected and qualified.

Eligibility.

SEC. 4. The board of trustees shall have power to pass by-

laws and ordinances, to remove nuisances, to suppress bawdy, gambling, and all other disorderly houses, within the limits of such town, to license and regulate theatrical and other amusements within such town, to prohibit firing of firearms, and prevent furious riding and driving of horses, or other animals, within the town, to establish night-watches and patrols, to erect and repair bridges, to regulate the landing and stationing of steamboats, rafts, and other water crafts, to prevent the introduction and spreading of diseases, to open public squares and avenues, drains and sewers, streets and alleys, to impose and appropriate fines and forfeitures for breaches of their ordinances, to levy and collect taxes, and to pass by-laws and ordinances for the regulation of the police of such town.

Powers and
duties of trustees.

SEC. 5. The board of trustees shall have power to appoint a constable, collector, and assessor, and other officers, and remove them from office, and fix them a compensation for their services.

Power to appoint officers.

SEC. 6. Every trustee shall, before he enters upon the duties of his office, take an oath before some judge or justice of the peace, that he will faithfully and impartially discharge the duties enjoined on him by law.

Oath.

SEC. 7. Every board of trustees shall assemble within thirty days after their appointment or election, and one of their number shall be chosen chairman, and they shall also appoint some suitable person clerk. The board of trustees shall, by ordinance, fix the time and place of meeting.

Chairman
and clerk.

SEC. 8. The chairman may at any time, if necessary, call a meeting of the board, by order to the clerk, who shall notify the remaining members of the board, and a majority of the trustees shall constitute a quorum to do business. A smaller number may adjourn from time to time, and may compel the attendance of absent members, by ordering a notice to be served upon them by the clerk; and if absent members fail to attend after being duly notified by the clerk, at the time and place appointed by those adjourning, they shall be deemed to have vacated their office, and upon proof of such notice and failure to the county commissioners, they shall fill such vacancy or vacancies, and those appointed to fill vacancies shall hold their offices till the next regular election, and until their successors are elected and qualified.

Quorum.

Failure to attend.

SEC. 9. The county commissioners shall appoint three suitable persons as judges of the election of trustees of any incorporated town, qualified to act as judges of other elections held under the laws of this territory, and they shall appoint clerks, and both judges and clerks shall take the like oath as judges and clerks of other elections, and proceed in every respect as in such cases.

Judges of election.

Oath.

SEC. 10. If the county commissioners fail to appoint judges of such elections, the voters, when assembled, shall appoint judges, who shall appoint clerks, and proceed in all things as the judges appointed by the commissioners.

When voters
to appoint.

SEC. 11. The collector may collect all taxes levied by the board of trustees, in the same manner that collectors of the revenue of this territory are authorized to collect the territorial revenue.

Collector.

SEC. 12. All fines, penalties, and forfeitures accruing to any

Fines &c.,
how recorded.

town, may be recovered by action of debt, in the name of the corporation, before any justice of the peace.

Prosecution.

SEC. 13. Such action may be commenced and prosecuted by the attorney for the corporation, which the board of trustees shall have power to appoint, or by order of the board. Any inhabitant of such town may be a juror or witness, if otherwise competent and qualified.

By laws to be
published.

SEC. 14. The chairman of the board of trustees shall cause all the by-laws and ordinances of the board to be printed and published for the information of the inhabitants, and cause the same to be carried into effect.

Vacancies,
how filled.

SEC. 15. Vacancies occasioned by death, resignation, or removal from the town, shall be filled by the county commissioners, and the chairman of the board is required to notify such commissioners of such vacancies.

Chairman
pro tem.

SEC. 16. If the chairman of the board be absent at any meeting of the board, a chairman *pro tempore* may be appointed by the board, who shall in all things perform the duties of the regular chairman, and be subject to the like penalties for failing to perform such duties.

Voters.

SEC. 17. No person shall vote at the election of trustees of an incorporated town but free white male citizens of the United States, over twenty-one years of age, residing within the limits of the town incorporated, and who have been three months a resident of such town at the time of the election.

Elections.

SEC. 18. All elections for trustees shall be opened at ten o'clock in the forenoon, and be kept open until six o'clock in the evening, and the votes shall be given by ballot. After the close of the election, the judges shall make out an abstract of the votes cast, and return the same, together with one of the poll-books of the election, by one of the clerks, to the county clerk. Such abstract must be certified under the hands of the judges and attested by the clerks.

Canvassing
returns.

SEC. 19. The county clerk shall take to his assistance, within ten days after the returns are made to him, two justices of the peace of the county, and examine such returns, and give to the persons having the highest number of votes certificates of election.

In case of a tie.

SEC. 20. In case of a tie, the county clerk shall order another election, stating the time, and order the clerk to give notice of such election; and the voters, when assembled, shall appoint judges, and the judges shall appoint clerks, and proceed with the election in all respects as in other cases.

Term of office

SEC. 21. If the regular election of trustees be not held, the board of trustees and other officers shall continue to perform the duties of their office, and the county clerk shall fix a time for an election and order the clerk of the board to give notice thereof.

Petition for
dissolution.

SEC. 22. A majority of the taxable inhabitants of any incorporated town may petition the county commissioners for a dissolution of their corporation, and the same shall be dissolved, if the commissioners be satisfied that a majority of such inhabitants have so petitioned.

SEC. 23. The county commissioners, upon the dissolution of

any corporation, shall appoint some suitable person trustee for such corporation. Trustee.

SEC. 24. The trustee shall forthwith take charge of all the property, papers, and effects of the corporation, and collect the debts due the corporation, and sell the property belonging to the same, under the direction of such commissioners. Duties of trustee.

SEC. 25. The trustee shall, before he enters upon the discharge of his duties, take an oath and give bond for the faithful performance of his duties; the bond shall be given to the county for the use of the inhabitants of the incorporated town. Bond and oath.

SEC. 26. When any town is indebted to any person, the board of trustees shall audit and settle the same, and draw a warrant upon the treasurer of the corporation, which shall be signed by the chairman and attested by the clerk. Debts, how paid.

SEC. 27. All warrants drawn on the treasurer shall be assignable. Warrants assignable.

SEC. 28. No treasurer shall pay any warrant drawn on the treasury of any corporation to any other person than the person in whose favor the same is drawn, or his executor or administrator, or to the person to whom the same shall be assigned, or to his executor or administrator. to whom payable.

SEC. 29. If any treasurer violate the provisions of the preceding section, he shall be fined not less than fifty dollars, nor more than two hundred dollars, for every such offense. Penalty.

Approved January 25, 1856.

CHAPTER V.

TOWN PLAT.

SEC. 1. The proprietor of any land may lay out a town, or addition to any town, and he shall cause an accurate map or plat to be made out, particularly describing the lots, streets, avenues, lanes, alleys, or other grounds belonging to such town or addition. The lots must be designated by their numbers, and the streets, alleys, avenues, lanes and other grounds, must be designated by names or numbers, and such plat shall be acknowledged before some court or officer authorized to take the acknowledgment of deeds, or conveyances of real estate, and when such map or plat is made out and acknowledged the same shall be filed and recorded in the office of the register of deeds of the county. Map to be made and recorded.

SEC. 2. Such plat and acknowledgment being so recorded, shall be equivalent to a deed in fee simple from the proprietor of all streets, alleys, avenues, squares, parks and commons, and such portion of the land as is therein set apart for public, county, village, town or city use, or is dedicated to charitable, religious, or educational purposes. Equivalent to Deed in fee simple.

SEC. 3. If any town, or addition to any town plat, be filed in the office of the register of any county, and the lines thereof be changed, by reason of the establishment of a new county, and such town or addition fall within the limits of such new county, In case of division of county

the register of the old county shall forthwith transmit such map or plat to the register of the new county for record, and it shall be there recorded.

May be vacated.

SEC. 4. Any town plat or addition to any town plat, may be wholly or in part vacated, whenever the consent of all the property holders of such town or of an addition to any town can be obtained, and for that purpose a petition may be presented to the county commissioners, asking a vacation of the whole, or the part desired to be vacated, signed by all the property holders.

Non residents.

SEC. 5. If any property holder in such town or village be a non-resident, or be unknown, a notice of the petition having been presented to such commissioners shall be published for six weeks, the last insertion to be at least four weeks before the order of vacation is to be made. Any property holder can then appear at the time designated in the notice, and make his objections to the vacation, and in such case no vacation shall be made.

Vacation, how ordered.

SEC. 6. If no objection be made, the order for vacation shall be made, and all the right and title to all streets, lanes, alleys, avenues, squares, commons or other grounds, dedicated to public use, shall revert to the original proprietor or proprietors, their heirs or assigns, and the commissioners shall issue a proclamation to that effect.

Damages, how taken.

SEC. 7. In all cases of vacation, any person who has not had personal notice of the application therefor, may apply to the commissioners and demand an assessment of all damages, that he may have sustained by reason of such vacation, and an appeal shall lie from the judgment of the commissioners to the district court of the county.

Town plat to be surveyed.

SEC. 8. Every town plat when presented for record, shall have appended to it a regular survey thereof made by some competent surveyor, beginning at some permanent, visible, natural or artificial monument, with one or more bearing post, stone, tree, or object, and the surveyor shall certify that he has accurately surveyed such town, and that the streets, alleys, lanes avenues, squares, parks, commons, and such pieces or lots set apart for public, village, town, city or county use, or dedicated to charitable, religious, or educational purposes, are well and accurately staked off and marked. And if any proprietor or proprietors of such town or addition, shall sell or offer to sell any lots or subdivisions of such town or parts thereof, without complying with the requirements of this chapter, he or they shall forfeit one hundred dollars for each lot, subdivision or part thereof, so sold or offered for sale, to be recovered by any person who will sue for the same.

Provisions general.

SEC. 9. The provisions of this chapter shall apply to all town sites that have heretofore, or hereafter may be laid out on the public lands.

Approved January 23, 1856.

CHAPTER VI.

COUNTY SURVEYORS.

SEC. 1. There shall be elected, in each county in this Territory, at the annual election in August, 1857, every two years thereafter, one county surveyor, and it shall be the duty of the county clerk to issue a certificate of election to such person, so elected; *Provided*, That an absence from the county six months, at any one time, shall be considered sufficient cause to declare the office vacant, unless the surveyor's family continue to reside in the county.

Surveyor to
be elected.

SEC. 2. Each and every surveyor shall, previous to entering on the duties of his office, take an oath, that he will faithfully and impartially discharge the duties of his office, to the best of his skill and judgment, without favor or affection, which oath may be administered by any judge or justice of the peace in the county, and shall be endorsed on his certificate of election.

To take oath.

SEC. 3. Each and every county surveyor may appoint one or more deputies, who shall take an oath similar to the one taken by the surveyor himself, and the surveyor shall be responsible for the official acts of his deputies.

Deputies.

SEC. 4. It shall be the duty of said county surveyor to make all surveys within the bounds of his county, that he may be called upon to make, either by himself or by his deputy, properly authorized by himself, and competent to perform the same, within a reasonable time after application is made to him.

Surveys with-
in county.

SEC. 5. All chainmen necessary shall be employed by the person wanting surveying done; they shall be good, and disinterested persons, to be approved by the surveyor, and they shall be sworn by the surveyor to measure justly and exactly to the best of their knowledge.

Chairmen.

SEC. 6. In subdividing a section as surveyed by government, the county surveyor shall start from the quarter section corner, either on the east or west boundary of the section, and run a random line to the quarter section corner on the opposite boundary of the section, noting the error in intersection, thence returning he shall mark the true line, and establish the eighth and quarter section corners, on the same proportionably, dividing the error in measurement; the center of the section being thus obtained, he shall proceed to subdivide the section as required, establishing all other lines and corners in like manner, as the first or center line. For the purpose of perpetuating every survey, the surveyor shall be required to establish his corners, by taking bearing trees, and noting particularly their course and distance, and where there are no trees within a reasonable distance, he shall perpetuate his corners by erecting mounds, the earth for the erection of which shall be taken from a single pit, eight links west of the corner; *Provided*, In all cases where it shall be practicable, the surveyor shall require the persons having the survey made, to furnish suitable stones, which shall be permanently placed at each corner in the ground; the surveyor shall furnish the proprietor of every tract of

Field notes.

Corners and
bearings.

land he may survey, with a copy of the field notes of the same. It shall also be the duty of the county surveyor to furnish himself with a well bound book, in which he shall carefully and legibly record, and note down, every survey made by him, giving the name of the person, the survey of whose land is so recorded, and describing as near as practicable, the metes and bounds of the lands, and noting the date on which the survey was made, and such record shall be subject to the inspection of every person who may be interested in the same, and a certified copy thereof, under the hand of the surveyor, shall be admitted as prima facie evidence in any court of record in this Territory.

Official record
to be delivered
up.

SEC. 7. It shall be the duty of every county surveyor, or other person having the official record of such surveyor in his possession, to deliver it up to his successor when demanded; and every person having possession aforesaid, refusing the same when demanded, shall forfeit and pay one dollar for every day he may retain it after demand, to be recovered by any person who may sue for the same before any justice of the peace of the proper county, one half to the person suing, and the other half to the county.

Act may be
reviewed.

SEC. 8. No act done, or record made, by any surveyor or his deputy, as aforesaid, shall be conclusive, but may be reviewed by any competent tribunal when the correctness of the same may be disputed.

Per diem.

SEC. 9. The county surveyors, respectively, shall be allowed four dollars for each day, or fraction of a day's service, on preliminary or ordinary land surveys, and for laying off town lots or city plats, the sum of twenty cents for each lot not exceeding one fourth of an acre.

Approved January 25th, 1856.

CHAPTER VII.

BONDS, BILLS OF EXCHANGE, ETC.

Bonds, notes
&c., negotiable.

SEC. 1. All promissory notes, bills of exchange, bonds, or other instruments in writing, signed by any person, who promises to pay money, or acknowledges money to be due, or for the delivery of a specific article, or to convey property, or to perform any stipulation therein mentioned, shall be negotiable by endorsement thereon, so as to vest the property thereof in each endorsee successively.

Assignee may
recover.

SEC. 2. The assignee of any such instrument may, in his own name, recover against the person who made the same.

Set-off.

SEC. 3. Whatever defense, or set-off, the maker of any such instrument had, before notice of assignment against the assignor, or against the original payee, he shall have also against the assignees.

Action against
endorser.

SEC. 4. Any such assignee, having used due diligence in the premises, shall have his action against his immediate, or any remote endorser, and in a suit against a remote endorser, he shall have any defense which he might have had in a suit brought by his immediate assignee.

SEC. 5. Notes payable to order, or bearer, in a bank in this Territory, shall be negotiable as inland bills of exchange, and the payers and endorsers thereof may recover as in cases of such bills. Notes payable to order, how sued.

SEC. 6. Damages payable on protest, for non-payment, or non-acceptance of a bill of exchange, drawn or negotiated within this Territory, shall be, if drawn upon any person, at any place out of this Territory, but within the United States, or any Territory thereof, five per cent., but if upon any person, at any place without the United States, ten per cent. on the principal of such bill. Damages on protest.

SEC. 7. Beyond such damages, no interest on charges accruing prior to protest, shall be allowed, but interest may be allowed from the date of protest. Interest.

SEC. 8. As to any bills payable within the United States, the rate of exchange shall not be taken into account. Exchange.

SEC. 9. No damages beyond cost of protest, shall be chargeable against the drawer or endorser, if, upon notice of protest and demand of the principal sum, the same is paid. Cost of protest

SEC. 10. No holder of a bill of exchange shall recover damages thereon, if he have not given for the same, or for some interest thereon, a valuable consideration. Bills, when void.

SEC. 11. On any bill drawn or negotiated in this Territory, and payable at any place therein, but in regard to which it shall appear that it was not to be presented for acceptance or payment at that place, if means were provided for its discharge within this Territory, no damages for protest shall be allowed. Bills not to be presented.

SEC. 12. The provisions of this act relating to damages on bills of exchange, shall not apply to promissory notes discounted by any bank and protested for non-payment. Notes excepted.

SEC. 13. On all bills of exchange, payable within this Territory, whether sight or time bills, three days grace shall be allowed. Days of grace

SEC. 14. The holder of any note or bill of exchange, negotiable by the law of merchants, or by law of this Territory, may institute one suit against the whole, or any number of the parties liable to such; but such holder shall not, at the same term of the Court, institute more than one suit on such note or bill. How sued.

Approved January 25, 1856.

CHAPTER VIII.

PRECINCTS.

SEC. 1. Each board of county commissioners may divide the county into convenient precincts, and as occasion may require, erect new ones, subdivide precincts already established, and alter precinct lines. County Commissioners to divide precincts.

SEC. 2. Each precinct in this Territory shall be entitled to elect two justices of the peace, to be elected in the manner hereinafter provided. Two justices in each precinct.

- Term of office.** SEC. 3. Each justice of the peace now in office, shall continue to act as such, until the expiration of his commission, and until his successor is elected and qualified.
- Vacancy, how filled.** SEC. 4. When a vacancy occurs in the office of justice of the peace, the board of county commissioners of said county, may supply the same, by the appointment of some person competent and qualified, who shall hold his office until the next general election of county officers, and until his successor is elected and qualified,
- Justice to hold for 2 years.** SEC. 5. Justices of the peace shall hold their offices for two years, and until their successors are elected and qualified.
- To qualify in 30 days.** SEC. 6. Every person who receives a certificate of election as justice of the peace, shall within thirty days thereafter, and before entering upon the discharge of his duties, cause the same, together with the oath of office endorsed thereon, to be deposited in the office of the county clerk, which shall be deemed an acceptance of such appointment, and in case of his failing so to do, it shall be deemed a refusal thereof.
- New precinct.** SEC. 7. When a precinct shall be divided, and any justice of the peace of the original precinct shall fall into a new precinct, he shall continue to act as justice, until his commission expires, as if the precinct had not been divided.
- Qualification.** SEC. 8. No person commissioned as a justice of the peace, shall, under any pretence whatever, be permitted to act as such, until he shall have filed his certificate of election with the county clerk for record.
- Fine.** SEC. 9. Any person who shall act in violation of the preceding section, shall, upon conviction thereof, by indictment, be fined not exceeding one hundred dollars.
- Resignation.** SEC. 10. All resignations of justices of the peace shall be in writing, and addressed to the county clerk.
- To deliver books and papers.** SEC. 11. Whenever a justice of the peace shall resign, move out of the Territory, or be otherwise disqualified, he shall immediately thereafter deliver to the clerk of the county all dockets records, books, papers, and documents appertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity.
- Clerk to receipt.** SEC. 12. The clerk of the county shall give to the person delivering him such dockets and papers, a receipt therefor, and shall immediately thereafter cause the same to be delivered to some justice of the peace of the precinct in which the vacancy happened.
- Constables.** SEC. 13. Each precinct shall be entitled to two constables, to be elected at the time of other county officers, who shall hold their offices for the term of two years, and until their successors are elected and qualified.
- Bond.** SEC. 14. Each person elected constable shall, within twenty days after the election, give bond as required, in the sum of at least five hundred dollars, with one or more good securities, for the faithful performance of his duty, which bond shall be payable to the Territory of Nebraska, and may be sued upon by any person injured, which suit shall be in the name of the Territory of Nebraska, for the use and benefit of the person injured.

SEC. 15. Every person elected constable shall, before he enters upon the duties of his office, take the oath required by law, which shall be written upon the back of the bond, and be filed with the clerk of the county; which bond may be sued upon any time within two years, after the time for which he was elected. Oath.

SEC. 16. If any constable shall detain from any person any money collected by him by virtue of his office, after being required to pay the same, he shall be removed from office by the county commissioners, on motion founded on charges exhibited; a notice of the motion, and a copy of the charges shall be served on the constable, ten days before the day on which the motion is to be made.

SEC. 17. If any vacancy occur in the office of constable, the board of commissioners of the county shall fill the same by appointment, until the next election for county officers.

SEC. 18. Constables may serve criminal process, warrants, and subpoenas, throughout their respective counties, and all other process throughout their respective precincts, except where it is otherwise expressly directed.

SEC. 19. If any precinct be divided, the constable in office at the time of the division, shall continue to be constable of the precinct in which he resides, and another constable shall be appointed for the other vacancy, as in case of vacancy.

SEC. 20. Whenever summary proceedings are instituted against a constable, his sureties, jointly and severally, shall be liable for the same, and may, or may not be joined with him, and such recovery may be had against them, as is adjudged against the constable. Bond, how sued.

SEC. 21. It shall be the duty of every constable, elected or appointed after the taking effect of this chapter, to receive and receipt for every claim within the jurisdiction of a justice of the peace of his precinct, that may be tendered him for collection; and such constable and his securities on his official bond, shall be liable for the amount that may be collected by said constable on such claim, whether the same be collected by process or otherwise. Liability for collections.

Approved January 26, 1856.

CHAPTER IX.

ELECTIONS.

SEC. 1. An election for members of the Council shall take place on the first Monday in August, 1856, and on the same day in every second year thereafter. Time of holding election.

SEC. 2. That an election for members of the House of Representatives shall take place on the first Monday in August, 1856, and on the same day in every year thereafter. Same.

SEC. 3. An election for Delegate to Congress, Territorial and County Officers, viz: consisting of one Probate Judge, one County Commissioner, one Register, one Sheriff, one Treasurer, one Same.

County Clerk, one Superintendent of Common Schools, and one County Surveyor, for each county; also, one Territorial Treasurer, Auditor, Attorney General, and Librarian, also, one District Attorney for each judicial district in the Territory, and two justices of the peace, and two constables for each precinct, shall take place on the first Monday in August, 1857, and on the same day in every second year thereafter.

Judges of election, how appointed.

SEC. 4. The county commissioners shall respectively at least forty days before any annual election, appoint three judges of election, having the qualification of electors at each election precinct, and shall cause written notice of said appointment to be given to said judges at least ten days previous to such election.

Clerks, how appointed.

SEC. 5. The said judges shall choose two clerks having similar qualifications to themselves, who, together with said judges, shall constitute the board of election, and the said board shall hold their offices for one year and until their successors are appointed, and in case of any vacancy the same shall be filled by the remaining members of the board.

Notice to be given.

SEC. 6. The several county commissioners shall at least thirty days previous to any annual election, cause three written notices thereof to be posted up in each election precinct, which notice shall contain a list of all the officers to be ballotted for at said election. And in case of a special election, the above notice shall be given eight days previous to such election.

Time of opening polls.

SEC. 7. The polls of all elections shall be opened at nine o'clock in the morning, and continue open until six o'clock in the evening of the same day.

Board, how to qualify.

SEC. 8. The said board shall be qualified by severally subscribing the following oath, administered by any person authorized by law.

I, A. B., do solemnly swear that I will perform the duties of judge (or clerk) of election according to law and the best of my ability, which oath shall be duly certified upon the poll books.

To vote by ballot.

SEC. 9. The manner of voting shall be by ballot, and the elector shall deliver his ballot to one of the judges of the election, who shall immediately deposit the same in the ballot box.

Who declared voters.

SEC. 10. Every free white male citizen of the United States, who has attained the age of twenty-one years, and those who shall have declared on oath their intentions to become such, and shall have taken an oath to support the Constitution of the United States, and the provisions of the Organic Law of this Territory, shall be entitled to vote in the precinct where he resides at all elections. *Provided*, he has been an inhabitant of this Territory forty days, and of the county twenty days next preceeding the election.

Challenge.

SEC. 11. Any member of the board of electors, or persons who have voted at such election, may challenge any elector proposing to vote, whereupon one of the said board shall tender to such elector the following oath:

I, A. B., do solemnly swear that I am a citizen of the United

States, or that I have taken an oath to become such, (as the case may be) that I have been an inhabitant of the county of _____ for the last twenty days, and in this Territory for the last forty days, and have attained the age of twenty-one years, to the best of my knowledge and belief.

Upon taking such oath the ballot shall be received.

SEC. 12. Any person taking any of the oaths herein contained, knowing them to be false, shall be deemed guilty of perjury.

When guilty of perjury.

SEC. 13. At the close of the poll, the votes shall be counted and the clerks shall enter upon their poll books the names of every person voted for, the office for which such person was voted for and the numbers of votes he received therefor, such entry to be made as nearly as may be, in the following form:

Votes, how counted.

At an election held at the house of _____ in _____ precinct, in the county of _____, and Territory of Nebraska, on the _____ day of _____, A. D., _____, the following named persons received the number of votes annexed to their respective names, for the following described offices: A. B., had _____ votes for sheriff, and in the same manner for any other office voted for.

Form of certificate.

Certified by us,

A. D. }
C. B. } Judges of Election.
J. R. }

Attest,

C. M. }
I. O. } Clerks of Election.

SEC. 14. At the close of the canvass, one of the poll books and one of the ballots cast, shall be delivered to one of the judges for safe keeping, and the other poll book securely enclosed and sealed, shall be within three days thereafter conveyed to the county clerk, by one of the board.

Poll books and ballots, how kept.

SEC. 15. On the reception of said returns by said clerk, he, together with two disinterested house-holders chosen by him, shall open said returns, and make abstracts of the votes cast for each several office at said election.

Returns and abstract.

SEC. 16. The person having the highest number of votes for each several office shall be declared by the county clerk duly elected, and a certificate shall be issued accordingly; in case of a tie, he shall order a new election.

Officer declared elected.

SEC. 17. The judges and clerks of election shall each be entitled to one dollar and fifty cents for their services at each election, and all messengers sent by the clerk with returns shall be entitled to ten cents a mile going and returning, which shall be audited and paid like other demands against the Territory; but messengers in the county canvass shall be paid out of the county treasury to be audited like other claims against the county.

Per diem.

SEC. 18. The clerk shall transmit by special messenger, abstracts of the votes cast for each Territorial officer and Delegate to Congress, to the Auditor of the Territory, who shall within five days after receiving the abstracts, in the presence of the Governor

Returns to be sent.
Secretary.

- Tie. and one Territorial officer, proceed to cast up the votes given in the several counties of this Territory for Delegate to Congress and Territorial officers, and shall give to the person who has the highest number of votes, certificates of election.)
- Vacancy. SEC. 19. In case of a tie upon any Territorial office, a new election shall be ordered by the Governor.
- Contest. SEC. 20. In case of a vacancy in any of the offices provided for in this act, the Governor is hereby required to order a special election. In case of a vacancy in the office of any Territorial officer, the Governor shall fill the vacancy by appointment, and in case of a vacancy in the office of a county office, the county clerk shall order a new election, and the register shall act as clerk of the county until the clerk is elected and qualified.
- Board to decide. SEC. 21. If an elector of the county or district shall desire to contest the validity of an election, such elector shall give notice of his intention in writing to the person whose election he intends to contest, or leave a notice at his usual place of residence within twenty days after the day of the election.
- Time of notice. SEC. 22. The county clerk and one person chosen by the contestor, and one chosen by the contestee shall hear the testimony, take depositions, and determine such contested seat, as they may deem legal and just, and should either party fail to appear, the clerk and the persons thus selected shall determine the same, and they shall have power to send for and examine witnesses under oath.
- Decision of board final. SEC. 23. Said notice shall express the points on which the same will be contested, the place where, and the time when the depositions will be taken, which time shall not exceed thirty days from the date of election.
- SEC. 24. The contest board when met, shall hear and certify all testimony relative to the said contested election, to the President of the Council or Speaker of the House of Representatives, as the case may require, and send all papers connected with the case. In case of county officers, the decision of the board shall be final, and the certificate issued by the clerk.
- SEC. 25. All costs accruing in any contested election shall be paid by the unsuccessful party, to be recovered by the proper civil action.
- Register to deliver certificate. SEC. 26. That when two or more counties are embraced in one council or representative district, the clerks of the several counties in said district shall within twelve days after the day of election, attend at the office of the clerk of the county first named in the act creating the district, and there in connection all the clerks of said district shall compare the votes given in the several counties as represented by the abstracts returned; and the clerk of the county first named in the act creating the district shall make out and deliver to the person having the highest number of votes for the Council or House of Representatives a certificate of election, which shall be delivered when called for by the proper person or his agent.
- Penalty. SEC. 27. If any person who is concerned in conducting the election, shall wilfully neglect, or improperly perform the duties required by this act, he shall forfeit and pay to the county a sum

of not more than one hundred dollars, to be recovered by the proper action in the name of the county commissioners for the use of the county.

SEC. 28. The Treasurer, Auditor and Librarian of the Territory shall qualify within forty days after the returns are made and canvassed.

Territorial officers, when to qualify.

SEC. 29. The Territorial Treasurer shall give bonds in the sum of twenty-five thousand dollars to the Territory, conditioned for the faithful performance of his duties, which shall be approved by the Governor, if he deem it sufficient, and filed with the Secretary of the Territory.

Bonds.

SEC. 30. The Auditor shall give a like bond as the Treasurer, in the sum of five thousand dollars.

Same.

SEC. 31. The Librarian shall give a like bond as the Treasurer, in the sum of ten thousand dollars.

Same.

SEC. 32. The Judge of Probate shall give bonds in the sum of five thousand dollars.

Same.

SEC. 33. The Register shall give bonds in the sum of five thousand dollars.

Same.

SEC. 34. The County Treasurer shall give bonds in the sum of ten thousand dollars.

Same.

SEC. 35. The Sheriff shall give bonds in the sum of eight thousand dollars.

Same.

SEC. 36. The County Surveyor shall give bond in the sum of two thousand dollars.

Same.

SEC. 37. All of which bonds for the County officers shall be given to their respective counties, and to be approved by the County Commissioners and filed with their clerk.

Bonds, how approved.

SEC. 39. All bonds for District and Territorial officers, shall be given to the Territory.

Bonds to be given to Territory.

SEC. 39. All Territorial, district, county and precinct, and specially appointed officers, shall take the following oath, viz:

Oath.

I, do solemnly swear, that I will support the Constitution of the United States, and faithfully and impartially perform the duties of my office according to law, and the best of my ability.

SEC. 40. All officers within this Territory who are required to give bonds, shall make them conditional for the faithful and impartial performance of their respective duties, according to law.

Bonds conditional.

Approved Jan. 26, 1856.

CHAPTER XII.

OFFICIAL BONDS AND OATHS.

SEC. 1. Every officer of this Territory and every deputy before entering on his official duties shall take an oath to support the constitution of the United States, and that they will faithfully discharge the duties of such office.

Oath.

Oath, how certified.	SEC. 2. Such oath except in the cases specified in the following section, shall be endorsed on the commission or certificate and signed by him and certified to by the officer, before whom the same was taken, who shall also deliver to such person a certified copy of the same.
Members of Assembly, to take oath.	SEC. 3. Members of the General Assembly, shall take such oath, before taking their seats, which shall be entered on the Journals.
Oaths, how filed.	SEC. 4. The certified copy of such oath, shall be deposited by such persons as follows—First, of all officers, whose oath is endorsed on the commission, and whose duties are not limited to a particular county in the office of the Auditor of the Territory. Second—of county officers, and Justices of the peace and constables, in the clerks office of the county.
Bond, how filed.	SEC. 5. Every officer of whom an official bond is required by law, except county clerk, shall file such bond in the same office in which he is required to file the certified copy of his official oath; and the county clerk shall file his bond with the county register.
Officer to give certified copies.	SEC. 6. Every officer with whom such certified copies and bonds shall be filed shall preserve the same, and on demand give certified copies thereof, or of the record attested with his official seal, and for the same he shall receive the same fees allowed by law for certified copies in other cases.
Bonds, how approved.	SEC. 7. The bonds of all county and precinct officers shall be approved by the county commissioners.
Same.	SEC. 8. The approval of every official bond, shall be written thereon by the officer who approved thereof; and no bond shall be filed until lawfully approved.
Bond payable to Territory.	SEC. 9. All official bonds shall be payable to the Territory of Nebraska, and every such bond shall be obligatory to such Territory upon the principal and sureties for the faithful discharge of all duties required of such officer for the use of any person injured by any breach of the condition thereof.
Bond, when void.	SEC. 10. No official bond shall be void on the first recovery, but suits may be instituted thereon from time to time, until the penalty thereof is exhausted.
Same.	SEC. 11. No official bond shall be void because of defects in form or substance or in the approval and filing thereof; but upon the suggestion of such defects, such bond shall be as obligatory as if properly executed, filed and approved.
Bond, how executed.	SEC. 12. All official bonds required by law, shall be executed by the principal, and one or more sureties.
Copy of bond.	SEC. 13. A copy of any official bond legally certified shall be received as evidence, and suit may be maintained thereon as on the original bond.

Approved January 26, 1856.

CHAPTER XIV.

ESTRAYS.

SEC. 1. No person shall take up any unbroke animal as a stray, between the first day of April and the first day of November, unless the same be found within his lawful enclosure, nor shall any person, at any time, take up any stray unless it be found on his premises.

Estrays, how taken up.

SEC. 2. If any Horse Mule or Ass, liable to be taken up, come to any person's premises, any other person may notify him of the fact, and if he fail to take up such stray, for more than ten days after such notice, any other person, of the same county may take up such stray, and proceed with it as if taken up on his own premises, except that he shall produce to the justice of the peace, proof of the service of the notice, and shall not swear that the stray was taken up on his own premises.

Same.

SEC. 3. If any person take up any stray of any kind, and it be not claimed and proved, he shall within five days take it before a justice of the peace of the county, and make oath that it was taken up on his premises, and that the marks and brands have not been since altered to his knowledge.

Oath as to how taken up

SEC. 4. If necessary, the justice shall issue a summons to three disinterested house holders, to appear and approve the stray.

Appraisement.

SEC. 5. The house holders, or two of them, shall take an oath that they will fully, fairly and impartially appraise the same, and their appraisment, embracing a description of the size, color, sex, age, marks and brands of the stray, shall be entered by the justice in a book kept by him for that purpose.

SEC. 6. The justice shall deliver to such taker up, two certified copies of the entrys upon his stray book, one of which he shall within fifteen days after such appraisement, cause to be delivered to the county clerk.

Justice to deliver certified copies.

SEC. 7. Such justice shall give to the taker up, a written statement of the duties required by law, to be performed by such taker up.

Duty of Justice.

SEC. 8. The taker up shall immediately after the appraisment, cause a notice to be set up at three of the most public places in the precinct in which the stray is posted, which shall contain a copy of the entry on the justice's stray book.

Notice.

SEC. 9. The county clerk, immediately after recieving the certificate of any stray, from the justice, shall record the same in a book to be kept for that purpose.

Certificate to be recorded.

SEC. 10. The Secretary of the Territory shall select and contract with one printer on the north side of the Platte River to print all advertisements of strays required by law to be published on that side of the River, and another printer on the South side of that River to print all such advertisements of the South side of that River.

Estrays to be published.

SEC. 11. The Secretary of the Territory, immediately after contracting with any printer, shall notify the clerk of each county

Name and residence of printer.	on that side of the River, of the name and residence of the printer, and the price of advertisements.
How published.	SEC. 12. Such printer shall once in each month issue a newspaper or printed sheet, in which he shall give an insertion to all advertisements of strays sent to him, and shall send one copy of each monthly sheet to the clerk of each county on his side of the River.
Clerk to file publication.	SEC. 13. Such clerk shall receive, file and preserve in his office, all such papers sent to him, for the inspection of all persons who desire to examine them.
Fees for printing.	SEC. 14. Such printer shall receive for each stray mentioned in the advertisements, a sum agreed, by the Secretary of the Territory to be paid in the contract, not to exceed twenty-five cents.
Contract for printing.	SEC. 15. The Secretary shall contract with printers on the first day of January, after this chapter takes effect, and such contract shall terminate and be renewed on the first day of January annually.
Vacancy, how filled.	SEC. 16. Vacancies in the office of printer, shall be filled by the Secretary of the Territory, by new contracts, as soon as he shall have given reasonable notice to all the printers in the district.
Owner to pay charges.	SEC. 17. If the owner of any stray Horse, Mule, or Ass, do not prove it according to law within twenty days from the time the same was taken up, the person taking it up shall pay the clerk all fees, the necessary postage, and the price of advertisement, and the appraisment of the stray, and shall account for all money received by him.
Clerk not to transmit copy of appraisment.	SEC. 18. The clerk shall not transmit to such printer a copy of the appraisment of any neat cattle, sheep, hog or goat.
May work estray.	SEC. 19. Any person may use or work a stray legally taken up by him, if he do so with care and moderation, and do not abuse or injure it.
Payment of costs.	SEC. 20. The owner of any stray may, within one year from the time of taking up, prove the same by evidence before a justice of the peace, and upon the payment of all costs, the reward, and a reasonable allowance for keeping the same, he shall be entitled to receive the stray.
Name.	SEC. 21. If the owner and taker up cannot agree in the amount of such allowance, it shall be settled by some justice of the peace, who shall take into consideration the trouble of the taker up, and whatever use or service he may have had of such stray.
When title vests in taker up.	SEC. 22. If the owner fail to comply with the two preceding sections for one year after the time of taking up, and the taker up shall have complied with this law, a complete title to such stray shall vest in the taker up.
Same.	SEC. 23. If after the end of one year from the taking up, the owner shall appear and prove such stray and pay all costs and expenses as above provided, the taker up shall pay him the appraisment price of the stray, or, at his option, may deliver him the stray.
Liability.	SEC. 24. If any stray legally taken up, get away or die, without the fault of the taker up, he shall not be liable for the same.
	SEC. 25. If any person shall sell or swap, or take out of this

territory, any stray, before the legal title shall have vested in him, he shall forfeit to the county, double the value of such stray, and may also be punished by imprisonment, on indictment, not exceeding one year, and forfeit to the owner double its value. Penalty.

SEC. 26. If any person unlawfully take up any stray, or take up any stray and fail to comply with this law, or use or work such stray in any manner contrary to this law, or use or work it before having it appraised, or shall keep the same more than three days out of the county at any one time, before he acquire title to the same, such offender shall forfeit to the county twenty dollars. Same.

SEC. 27: If any person take up any stray, and violate or fail to comply with this law, or abuse or injure such stray, the owner may recover of him double the amount of all injury sustained, with costs. Same.

SEC. 28. If any printer, clerk, or justice of the peace fail to perform the duties enjoined on him by this law, he shall forfeit to the county not less than five nor more than fifty dollars, and pay to the party injured not less than five nor more than twenty dollars, to be recovered before any justice of the peace of said county. Same.

Approved January 26, 1856.

CHAPTER XV.

MARKS AND BRANDS.

SEC. 1. Every person having cattle, hogs and sheep, shall have a mark or brand, different from the mark or brand of his neighbors, and he shall deliver to the register of deeds a description of his mark or brand, and such register shall record the same in a well bound book kept by him for that purpose. Marks and brands to be recorded.

SEC. 2. No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the register record the same mark or brand to more than one person. Same.

SEC. 3. No person shall use more than one mark or brand for his stock, nor use any other than the one recorded. Same.

SEC. 4. Every person shall mark or brand all his hogs or sheep over six months old, and his cattle over twelve months old, and if any dispute arise about the question of whose any mark or brand may be, the same shall be decided by the record of the register. Mark or brand to be decided by record.

SEC. 5. If any person shall willfully and knowingly have a mark or brand recorded, which is already recorded to another person in the same county, he shall be fined not less than twenty dollars, nor more than one hundred dollars.

SEC. 6. If any register shall record the same mark or brand to more than one person, he shall forfeit and pay, to the use of the county, a fine not exceeding one hundred dollars. Fine and penalty

SEC. 7. Every person who shall willfully and with intent to defraud, mis-brand or mis-mark any stock not his own, he shall Same.

forfeit and pay for every such offence not less than twenty dollars, nor exceeding one hundred dollars.

SEC. 8. If any person alter or deface the mark or brand of any other person, for every head of stock whose mark or brand shall be thus altered or defaced, he shall forfeit not exceeding one hundred dollars.

Approved January 25th, 1856.

CHAPTER XVI.

NOTARIES PUBLIC.

Governor may appoint.

SEC. 1. The Governor shall appoint and commission, in each county, as occasion may require, one or more notaries public, who shall hold their office for four years.

Powers of Notary.

SEC. 2. They may administer oaths and affirmations in all matters incident, or belonging to, the exercise of their notarial offices.

Same.

SEC. 3. They may receive proof, or acknowledgement, of all conveyances of real estate and instruments of writing relating to commerce and navigation; receive and authenticate acknowledgements of powers of attorney; make declarations and protest, and certify the truth thereof, under their official seals concerning all matters by them done by virtue of their office.

May certify depositions and accounts.

SEC. 4. They may make and certify depositions to be used in any and all accounts.

Record.

SEC. 5. Every notary public shall keep a fair record of his official acts, and if required, shall give a certified copy of any record in his office, upon the payment of the fees thereof.

Record, when to be delivered to clerk.

SEC. 6. If any notary die, resign, be disqualified, or remove from the county, the records and official and public papers of his office shall, within thirty days, be delivered to the county clerk to be delivered to his successor when qualified.

Seal.

SEC. 7. Every notary shall provide a notarial seal containing his name, surname, office, and place of residence, and he shall authenticate all his official acts, attestations and instruments therewith.

Oath and bond.

SEC. 8. Every notary, before entering on the duties of his office, shall take the oath of office, which shall be endorsed on his commission, and shall give bond to the Territory in the sum of two hundred dollars with good security, conditioned for the faithful performance of the duties of his office.

Bond to be recorded and filed.

SEC. 9. Such bond, commission, and oath, shall be recorded in the register's office, filed in the office of the secretary of the Territory, and may be sued on by any person injured.

SEC. 10. No suit shall be instituted against any such notary or his securities more than three years after such cause of action accrued.

Approved January 26th, 1856.

CHAPTER XVII.

MECHANICS LIENS.

SEC. 1. In all cases hereafter, when any contract shall be made between the owner, occupier or claimant of any tract of land or town lot, with the owners knowledge or consent on the one part, and any person on the other, for the erection of any building, mill or machinery, or their appurtenances, or for furnishing labor or materials for the purpose aforesaid; and any other person who may have furnished materials, which may have been used in the construction of such house, building, mill or machinery by agreement; the persons who shall, in pursuance of such contract, have furnished labor or materials for such purpose, shall respectively have a lien to secure the payment of the same, upon such house or other building, mill, or machinery, and on the ground on which the same shall have been erected, in proportion to the labor done and materials furnished, from the time of the filing the contract with the register as hereafter provided.

What constitutes a lien.

SEC. 2. When any person shall wish to avail himself of the benefit of such lien, he shall:

1—Make out and present, to the register of deeds of the proper county, for entry upon the "lien book" in his office, an abstract of his lien, setting forth the date of the contract, the amount to be paid for the work and materials, the time or times when payable, and a description of the building or machinery to be constructed, and of the land on which it is to be constructed.

Abstract of lien for registry.

2—Commence his action in any court having jurisdiction of the same, within one year from the time payment should have been made by virtue of any such contract.

Commencement of action.

SEC. 3. If the suit be commenced before a justice's court and a judgment obtained on such contract for such work or materials, the plaintiff must cause a transcript of the judgment to be entered in the office of the clerk of the district court for the county, and have the same docketed; and on an execution issued in such or in any other case in the district court, the property so secured by such lien, may be sold, and the balance if any, may be made by sale of any other property of the defendant not exempt from execution.

Transcript of Judgment to be filed in District Court.

Approved January 25th, 1856.

CHAPTER XVIII.

COMMON SCHOOLS.

- Librarian to be Superintendent. SEC. 1. The librarian of the Territory shall be and is hereby constituted Superintendent of Public Instruction, and shall receive an annual salary of two hundred dollars, to be paid out of any contingent funds of the Territory not otherwise appropriated.
- His duties. SEC. 2. He shall file all papers, reports and public documents transmitted to him by the school officers of the several counties, each year separately, and hold the same in readiness to be exhibited to the Governor, or to any committees of either house of the Legislative Assembly, and shall keep a fair record of all matters pertaining to the business of his office.
- Same. SEC. 3. He shall have a general supervision of all the district schools of the Territory, and shall see that the school system is, as early as practicable, put into uniform operation, and shall recommend to the several school districts a uniform series of text books, to be used in the schools thereof.
- Same. SEC. 4. He shall prepare and have printed suitable forms for all reports required by this act, and shall transmit the same with such instructions in reference to the course of studies as he may judge advisable, to the several officers entrusted with their management and care.
- Same. SEC. 5. He shall make all further rules and regulations that may be necessary to carry the law into full force, according to its spirit and intent, which shall have the same force and effect as though contained herein.
- Same. SEC. 6. He shall cause so many copies of this act with the forms, regulations, and instructions herein contemplated, thereto annexed, to be from time to time printed and distributed among the several school districts of the Territory as he shall deem expedient.
- Same. SEC. 7. He shall make a report to the Legislative Assembly on the first day of each regular session thereof, exhibiting the condition of public schools, and all such other matters relating to the affairs of his office as he may think proper to communicate.
- Sections 16 and 36 set apart. SEC. 8. All the lands donated, or which may hereafter be donated to the Territory by the Congress of the United States by law, and known as sections sixteen and thirty-six, or any other land for school purposes, shall be set apart and become a permanent school fund for the respective townships in which they lie.
- Appraisal of same. SEC. 9. It shall be the duty of the Superintendent of Common Schools in each organized county in this Territory, at or as early a day as may be convenient, after the United States' survey shall be completed in their respective counties, to proceed to an examination of the sixteenth and thirty-sixth sections, or lands that may be granted in lieu thereof, or any other lands, and allot the same in parcels as in their opinion may be best to suit purchasers, and advance the interest of the school fund; in such allotment conforming as nearly as may be to the legal subdivisions of the United States' survey, and place a true value on each parcel,

which value shall not be less than one dollar and twenty-five cents per acre ; *Provided*, that upon lands improved previous to the survey, the valuation shall be made as provided in the next succeeding section.

SEC. 10. When any person shall have so settled and made improvements on such lands, he shall have the privilege of entering it at the appraised value, which valuation shall be made so as not to include the improvements. Privilege of settlers.

SEC. 11. Whenever the superintendent shall have valued any lands upon which improvements are made, if the occupant wish to buy the same, he shall give his bond payable within ten years, with good and sufficient security, to be approved by the superintendent of common schools in the county in which they lie. May give bond for ten years.

SEC. 12. All bonds for the purchase of said lands, shall be drawn in favor of the inhabitants of the townships in which they lie, and shall be delivered to the superintendent, and shall draw interest at the rate of ten per cent. per annum, and the interest shall be payable on or before the first Monday in January annually. Bonds, how drawn.

SEC. 13. In case that any person shall purchase lands upon which there are improvements, the purchaser shall not be entitled to the possession thereof, until he has paid the person owning the improvements, the appraised value of the same, which shall be assessed by three house-holders of the Territory. Purchaser to pay for improvements.

SEC. 14. All the school lands as designated in this chapter, not entered by the person who made improvements thereon as aforesaid, shall be sold at public sale, at the place of holding courts in the county in which they are situated ; the superintendent first giving thirty days notice of such sale by advertisement in a newspaper printed in the Territory, and nearest to where the lands may lie. Sale of school lands.

Whenever the superintendent shall sell any lands under the provisions of this chapter, he shall give to the purchaser a certificate of purchase, containing a correct description thereof.

SEC. 15. The superintendent shall keep a faithful record of all his official acts and doings, and of all the papers filed in the same pertaining to the business of his office. Superintendent to keep records.

SEC. 16. Whenever any person shall make full payment for any school lands, the superintendent shall give a receipt, in which he shall give a particular description of the lands. His receipts.

SEC. 17. Whenever the Governor is presented with a receipt, as stated in the next succeeding section, he shall cause a patent to issue for the same to the person so paying, or his assignee, which shall be recognized in all courts as evidence of the title thereto. Patent issued.

SEC. 18. The interest only of all moneys arising from the sale of lands as above, shall be used for school purposes, and the principal shall be loaned at interest, at the rate of ten per cent. per annum, payable semi-annually, to be secured by bond and mortgage on unincumbered real estate in the county, of twice the value of the sum lent, without regard to buildings thereon. Interest only to be used.

COUNTY SUPERINTENDENTS.

- County Superintendent.** SEC. 19. There shall be chosen at the first election of county officers, and biennially thereafter, in each organized county in this Territory, a County Superintendent of Schools, who shall hold his office for two years, and until his successor is chosen and qualified.
- His oath and bond.** SEC. 20. Within twenty days after his election, he shall take and subscribe an oath that he will faithfully discharge the duties of his office, and shall also execute a bond to the Territory of Nebraska, in the penalty of one thousand dollars, with sureties, to be approved by the clerk of the county, conditioned for the faithful performance of his duty as county superintendent.
- Case of vacancy.** SEC. 21. Should he fail to qualify as above required, or if for any other reason there be a vacancy in the office, the clerk of the county shall appoint a substitute, who shall qualify in like manner.
- Report.** SEC. 22. He shall on the fifteenth day of October of each year, transmit to the superintendent of public instruction a report containing an abstract of the several particulars set forth in the reports of the district secretaries, together with a statement of the financial affairs of his office, and such suggestions as he may think proper to make relative to the schools of his county.
- Forfeit.** SEC. 23. Should he fail to make his report, as required in the foregoing section, he shall forfeit the sum of twenty dollars, and suit shall be brought on his official bond for the collection of the same with damages, by the prosecuting attorney.
- Accounts,** SEC. 24. He shall keep an accurate account of the receipts and expenditures of his office, and shall render an account current thereof, at any time, when required by the superintendent of public instruction.
- Receipts &c.** SEC. 25. He shall take receipts for all moneys paid out, in a book provided for that purpose, file all warrants and orders drawn on him by the respective presidents of the district boards, and all other papers transmitted to him pertaining to the business of his office, and shall hold the same subject to the inspection of the superintendent of public instruction, or any of the school officers of his county.
- Account with county officers.** SEC. 26. He shall keep a correct account of all moneys received from the county officers, specifying the particular source from which the same accrued.
- Circulars, &c.** SEC. 27. He shall distribute to the district officers within his county such blank forms, circulars, and other communications as may be transmitted to him for that purpose by the superintendent of public instruction.
- Apportionment.** SEC. 28. On the first day of March annually, he shall apportion the county school tax, and all money in his hands appropriated for the support of schools, among the several school districts of his county, in proportion to the number of persons reported to him by the respective district secretaries, and shall record a statement thereof in his office.
- Notice to President.** SEC. 29. He shall immediately notify the president of each school district of the amount to which his district may be entitled, by said apportionment, and shall pay the same over to the dis-

strict treasurer, upon the warrant of the president, countersigned by the secretary: *Provided*, said treasurer shall certify on oath that a tax not less than three mills to the dollar has been assessed and collected in his district on all taxable property.

SEC. 30. In all cases where it shall be deemed necessary to administer any oath or affirmation, under the provisions of this act or any other act, pertaining to the duties of the county superintendent, he is hereby authorized to administer the same.

Oaths, &c.

SEC. 31. He shall divide the county into school districts, and may alter and change the boundaries of districts thus formed, from time to time, as the convenience of the inhabitants of the aforesaid districts may require, and shall proceed to make such change at any time, when petitioned by two-thirds of the legal voters of any district. He shall examine all persons offering themselves as teachers of public schools, and if in his opinion, such persons are qualified to teach a public school, shall give them certificates authorizing them to teach public schools in their county for one year. He shall have the general superintendence of the schools in his county, and shall visit each school at least twice each term, and shall have power to dismiss all teachers he may find to be incompetent.

SEC. 32. The several county superintendents in this Territory shall report annually, on the first day of November, in each and every year, to the superintendent of public instruction, in such manner as he may direct.

SEC. 33. Each school district formed and organized under the provisions of this act, is hereby declared to be a body corporate, by the name and style of School District, No—— in the county of —— and Territory of Nebraska, and in that name it may hold property and be a party to suits and contracts.

SEC. 34. Upon the formation of a new school district, the county superintendent shall notify some qualified voter thereof, by written notice, describing the boundaries of the district, and also the time and place of the first meeting.

SEC. 35. The qualified electors of the district, when assembled in accordance with the notice required in the foregoing section, shall organize by appointing a president and secretary, who shall act as judges of the election, and the name of each elector shall be recorded by the secretary.

SEC. 36. They shall then, by ballot, elect one president, one secretary and one treasurer, who shall constitute a board of directors for the district, and shall hold their offices until the next succeeding annual district election, and until their successors are elected and qualified.

SEC. 37. Said directors shall within ten days after their election, appear before some justice of the peace, and take an oath for the faithful performance of their duties, and in case they fail to do so, they shall each forfeit the sum of five dollars for the use of the district.

SEC. 38. The regular meeting of each school district shall be held on the first Mondays in May and October of each year.

SEC. 39. The qualified electors of the district when assembled shall have power:

First.—To appoint a chairman and secretary in the absence of the regular officers.

Second.—To adjourn from time to time as occasion may require.

Third.—To determine the number of schools which shall be established in the district, and the length of time that each shall be taught.

Fourth.—To fix the site for each school-house, taking into consideration in doing so, the wants and necessities of the people of each portion of the district.

Fifth.—To lay such tax on the taxable property of the district, as the meeting shall deem sufficient to purchase or lease a suitable site for a school-house or school-houses, and to build, rent, or purchase a school-house or school-houses, and to keep in repair, and furnish the same with the necessary fuel and appendages, and for procuring libraries for the schools, books and stationery for the use of the board and district meetings, and to defray all other contingent expenses of the district.

Provided, however, that such tax shall not exceed one and a half per cent. on the taxable property aforesaid in any one year.

Sixth.—To direct the sale or other disposition to be made of any school-house or the site thereof, and of such other property, real or personal, as may belong to the district, and to direct the manner in which the proceeds therefrom shall be applied.

Seventh.—To determine what branches of learning shall be taught in the schools of their districts.

Eighth.—To delegate any or all of the powers contained in the foregoing specifications to the district board.

Ninth.—To fix the compensation of the secretary and treasurer of the district, and to transact generally such business as may tend to promote the cause of education in accordance with the provisions of this act.

SEC. 40. In levying a tax, the district meeting shall designate the respective objects for which the same is raised, and the amount to be raised for each object, and the aggregate amount shall be assessed and collected by the secretary, as herein provided.

SEC. 41. They may determine whether a school of a higher grade shall be established in the district, the number of teachers to be employed, and the course of instructions to be pursued therein; and may erect for the purpose one or more permanent school-houses, and shall cause the district board to make such classification of the pupils thereof as they may deem necessary; but in selecting the site for such school-house or school-houses, the permanent interest and future welfare of the people of the entire district shall be consulted. The extra compensation required for teachers' salaries in such school or schools, shall be paid by private subscription, in such proportionate parts as the board of directors may determine.

SEC. 42. They may adopt such rules of order not incompatible with the provisions of this act and instructions of the superin-

tendent of public instruction, for the government of district meetings, and may alter and change the same from time to time, as occasion may require, and may prescribe the manner of taking the sense of the meeting upon any question. *Provided*, that the last specification shall not apply to the selection of officers.

SEC. 43. There shall be elected in each organized school district, at the regular meeting on the first Monday in May of each year, one president, one secretary, and one treasurer of the district, who together shall constitute a board of directors for the district, and shall hold their offices for one year, and until their successors are elected and qualified.

SEC. 44. Said directors shall qualify in the manner prescribed in the preceding chapter for directors elected upon the formation of a new school district, and in case they neglect or refuse so to do, they shall be subject to the same penalty.

SEC. 45. The board of directors may hold such regular, special, or adjourned meetings, as they may from time to time determine.

SEC. 46. The president when present, shall preside at all meetings of the board and of the district, sign all warrants for the collection of taxes, all orders on the treasurer for the payment of money, and shall draw all drafts upon the county superintendent for money apportioned to his district.

SEC. 47. All drafts and orders drawn on the district treasurer, as required in the foregoing section, shall specify the fund on which they are drawn, and the use for which the money is designed.

SEC. 48. The district board shall employ all teachers necessary for the schools of the district, and pay them by draft on the treasurer; but they must not overdraw the amount due from teachers' fund; and when there are not sufficient funds in the hands of the treasurer for the payment of such teachers, the balance shall be paid by the persons sending pupils, in such manner as may be agreed upon by the teachers and the district board.

SEC. 49. The president shall appear in behalf of his district, in all suits brought by or against the same. But when he is individually a party, this duty shall be performed by the secretary.

SEC. 50. The secretary shall record all the proceedings of the board and the district meetings in separate books to be kept for that purpose, and shall preserve copies of all reports made to the county superintendent, and shall file all papers transmitted to him by other school officers pertaining to the business of the district, and shall countersign all drafts, warrants and orders drawn by the president.

SEC. 51. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the district board to be audited, and paid as herein provided, out of the school-house fund.

SEC. 52. He shall give ten days previous notice of all regular and special meetings of the district, as herein authorized, by posting up written notices in five different places therein, and shall furnish a copy of the same to the teachers of each school in the district, to be read once in the presence of the pupils thereof.

SEC. 53. Whenever a tax has been voted by the district, the secretary shall obtain a transcript of the last assessment roll of the county, and shall add thereto any taxable property therein omitted, having himself assessed the value thereof, and shall post up a list of the names of the persons taxed, at three or more places in the district, with the amount due from each set opposite their respective names, so far as their names may be known, at least thirty days previous to his proceeding to collect the tax.

SEC. 54. Should any one when called on, neglect or refuse to pay such tax, the secretary shall proceed to collect the same by distress and sale of goods and chattels found within the district, having first posted up at least ten days previous notice of such sale in three of the most public places in the district.

SEC. 55. When the owner of any claim or claims on land fails to pay the tax thereon, such failure shall be reported by the secretary to the county collector of taxes, in time for the same steps to be taken by such collector as are prescribed for the sale of claims for delinquent county taxes for the same year, the claim shall be sold in like manner and with the same consequences as though sold for delinquent county taxes; and if for any cause they are not then sold at the proper time, they may be sold the following or subsequent year, in the same manner and with the same consequences as above contemplated.

SEC. 56. The amount of tax collected by the county collector, in accordance with the provisions of the foregoing section, shall be held by him subject to the order of the president of the proper district, and shall be paid over accordingly.

SEC. 57. On the first day of October of each year he shall make out and file in the office of the county superintendent a report of the affairs of the district containing:

First.—The number of white persons between the age of five and twenty-one years.

Second.—The number of schools and the branches taught in each.

Third.—The number of pupils in each school.

Fourth.—The number of teachers employed in each school and the average compensation of each per month.

Fifth.—The number of days each school has been taught and by whom.

Sixth.—The average cost of tuition for a pupil per month in each school.

Seventh.—The books used in each school.

Eighth.—The number of volumes in the library of each school.

Ninth.—The aggregate amount paid teachers during the year, the source from which the same was received, and the amount of the teachers fund in the hands of the treasurer.

Tenth.—The number of district school houses and the cost of each.

Eleventh.—The amount raised in the district, by tax, for the erection of school houses, and for other purposes authorized in this act, and such other information as he may deem useful.

SEC. 58. Should the secretary fail to file his report as above directed, he shall forfeit the sum of ten dollars, and shall be liable to make good all loss resulting to the district from such failure. Suit is to be brought in both cases by the president, in the name of the district, on his official bond.

SEC. 59. The treasurer shall have the custody of all moneys belonging to the district, and shall pay out the same upon the order of the president, and shall keep an account of the receipts and expenditures thereof in a book provided for that purpose.

SEC. 60. The moneys for the payment of teachers shall be called the "teachers' fund," and those for school houses and district expenses the "school house fund," and the treasurer shall keep the same distinct, and keep separate accounts with them; and no warrant for money shall be paid by the treasurer which does not specify the fund on which it is drawn, and the specific use to which it is to be applied. The school house fund shall consist only of taxes collected in the district, and all other school moneys belonging to the district shall go to the teachers' fund, and shall be applied to no other use except to pay the wages of school teachers in the district.

SEC. 61. The treasurer shall apply for and receive all money apportioned to the district by the county superintendent when notified of said apportionment.

SEC. 62. He shall render a statement of the finances of the district as shown by the records of his office, at any time when required by the district board.

SEC. 63. The district board shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district for procuring any site for a school house, renting, repairing, or furnishing the same, or disposing thereof, or for keeping a school therein, and performing such other duties as may be delegated to them by the district meeting.

SEC. 64. They may, with the concurrence of the board of directors of an adjoining district or districts, admit pupils from either of said districts to a school within their own district, but said pupils shall be enumerated in their respective districts, and the portion of the school money to which they may be entitled by said enumeration shall be applied to the support of said school. The parents or guardians of said pupils shall pay such portion of the contingent expenses, and of the amount to be contributed by voluntary subscription for the support of said school, as the respective boards may deem equitable.

SEC. 65. The district board shall require the secretary and treasurer, each, to give bond to the district, in such penalties and with such securities as in their opinion will secure the district against any loss, conditioned for the faithful application of all moneys that may come into their hands by virtue of their respective offices. Said penalty may be increased from time to time as the interest of the district may require. The bond shall be filed with the president of the board, and, in case of a breach of the condition thereof, he shall bring suit thereon in the name of the district.

SEC. 66. In each organized district they shall act as judges of all district elections.

SEC. 67. They shall, from time to time, examine the books and accounts of the treasurer and make settlement with him, and shall, at each regular meeting of the district, present to the same a full statement of the receipts and expenditures of the district, and such other matters as may be deemed important.

SEC. 68. They shall appoint a committee from their own body to visit the respective schools of the district monthly, and to aid the teachers in establishing and enforcing rules for the government of schools, and to see that the teachers keep a correct list of the pupils, the time during which they attend school, the branches of learning which each pupil is studying, and such other matters as may in the opinion of the board tend to promote the welfare of the school.

SEC. 69. Before employing any person to act as teacher, the board of directors shall examine all such applicants in the following branches of an English education, to wit: spelling, reading, writing, arithmetic, geography, history of the United States, and English grammar, and if the applicant is found qualified the board may employ him.

SEC. 70. They shall audit and allow all just claims against the district, and the president shall draw an order for all demands thus audited on the district treasurer.

SEC. 71. They shall, upon the written request of five legal voters of the district, or whenever they deem it expedient, call especial meetings thereof; but in all such cases the notice for such meeting shall clearly state the precise object for which it is called and the time and place at which it is to be held.

SEC. 72. Should a vacancy occur in the board, they may fill the same by appointment, unless it is deemed expedient to call a special meeting of the district for the purpose.

SEC. 73. The county superintendent shall, at the time of levying the tax for county purposes, cause to be levied a tax for the support of schools within the county of not less than three mills to the dollar, and not more than five on the assessed value of all taxable property, real and personal, within the county, which shall be collected by the county collector at the same time and in the same manner as territorial and county taxes are collected, except that it shall be receivable only in cash.

SEC. 74. The collector shall, on the tenth day of February of each year, pay over the amount of said tax which shall have been collected to the county superintendent, and shall render a statement of the amount collected: the amount uncollected shall be collected, at any subsequent time, as delinquent county taxes are collected, and shall be paid over when collected to the county superintendent aforesaid.

SEC. 75. The collector shall be allowed one per cent. by the county superintendent for collecting said tax; and should he fail at any time to pay over the same, as herein provided, he shall forfeit the sum of fifty dollars and double damages, to be collected on his official bond.

SEC. 76. In all cases where the alteration of school districts,

as provided in this act, give rise to controversy respecting the adjustment of the rights and liabilities of the districts affected, upon which they cannot agree amicably, the matter shall be settled by the arbitrators appointed by the county superintendent as justice and equity may require. All awards made under this act shall be returned to the said county superintendent, who shall, at the request of either party who may wish to except thereto, file the same in the district court, to be dealt with as other awards under the statute on that subject.

SEC. 77. In all cases when suits may be instituted by or against any of the school officers contemplated or created by this act to enforce any of the provisions herein contained, counsel may be employed, if necessary, by the officer instituting the suit, and the expense of suit shall be borne by the district, county, or territory, in whose name or against whom the same may be instituted.

SEC. 78. All forfeitures provided for in this act shall, when they accrue, belong to the respective districts or counties in which the same may be incurred; and the district treasurers for their districts and the county commissioners of their counties are hereby authorized to receive and apply the proceeds of such forfeitures as the interest of the permanent fund is now or may hereafter be applied.

SEC. 79. The clear proceeds of all fines collected within the several counties of this territory for breaches of the penal laws, and all funds arising from the sale of water crafts, lost goods, and estrays, shall be paid over in cash by the persons collecting the same, within twenty days after collection, to the county superintendent of the county in which the same have accrued, and shall be by him apportioned to school districts as provided in this act.

SEC. 80. All funds arising from a breach of the penal laws shall be kept and proportioned separate and apart from all other school funds.

SEC. 81. Each and every officer created by the provisions of this act who shall receive, by virtue of his office, any books or papers, and shall refuse to deliver the same to his successor in office, or shall willfully mutilate or destroy the same, or any part thereof, shall be liable to a fine of not less than fifty nor more than one hundred dollars, to be recovered with damages on their respective official bonds.

Approved January 26, 1856.

CHAPTER XX.

COUNTY COMMISSIONERS.

- Board of commissioners.** SEC. 1. There shall be organized, in each county in this Territory, a Board of County Commissioners, to transact county business, to consist of three qualified voters, to be elected by the qualified voters of the several counties respectively, at the annual election in August. And when a vacancy occurs in the office of any commissioner three months before the expiration of the term, the vacancy shall be filled by a special election.
- Districts, how organized.** SEC. 2. Each county shall be divided into three districts, and be numbered one, two and three, not subject to alteration oftener than every three years. The board of commissioners at their first session after the passage of this act, shall proceed to divide their respective counties into districts, as provided in the first part of this section, and one commissioner shall be elected from each of said districts, by the votes of the whole county.
- Term of office.** SEC. 3. At the first election held to choose the board of commissioners of any county, the person having the highest number of votes shall continue in office for three years, the next highest two years, and the next highest thereafter, one year, but if any two or more persons have the same number of votes, their term shall be determined by lot, under the direction of the board of canvassers, and annually thereafter, one commissioner shall be elected, and continue in office for the term of three years, and until his successors is duly elected and qualified.
- Oath.** SEC. 4. Each person, elected as such commissioner, shall on receiving certificates of his election, take the usual oath of office, which being certified on the back of such certificate, under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to act.
- Time of meeting.** SEC. 5. Such commissioners shall meet at the court house, or usual place of holding courts, on the first Monday in January, April, July and October, *Provided*, the clerk may call special sessions when the business of the county requires it.
- Clerk to record proceedings.** SEC. 6. The clerk of the county shall attend the meetings of such commissioners and keep a record of their proceedings, and the sheriff of the county shall also, by himself or deputy, execute their orders.
- In case of tie.** SEC. 7. When two only of the number shall attend the meeting of the board, and a division shall take place on any question, it shall be continued until the next meeting of the board, before it is decided.
- When evidence.** SEC. 8. Copies of their proceedings, duly certified and attested by the clerk, shall be received as evidence in all the courts of this Territory.
- Commissioners may administer oath.** SEC. 9. Such commissioners or their clerk, may administer all oaths necessary to carry into effect the provisions of this act, and they shall have power to preserve order when sitting as such, to punish contempts by fine not exceeding five dollars, or imprisonment in the county jail not exceeding ten hours, may enforce

obedience to all orders made by them, by attachment or other compulsory process, and when fines are assessed by them, the same may be collected before any justice of the peace having jurisdiction, which shall be paid over as other fines.

SEC. 10. In any county where the county business is done by a Judge of Probate, he shall continue to act until the county commissioners shall be chosen and qualified.

Judge of Probate may act.

SEC. 11. Such commissioners in their respective counties, shall have power at their meeting, first, to make orders respecting the property of the county in conformity to law, to sell the public grounds of the county and purchase other grounds in lieu thereof; second, to allow all accounts chargeable against such county, not otherwise provided for, and to direct the raising of such sums as may be necessary to defray all county expenses; third, to audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county, or appropriated for its benefit, and fourth, to perform all other duties which may be required of them by law.

Commissioners may sell public property.

SEC. 12. Such commissioners shall cause to be recorded, in a well bound book to be kept for that purpose, their proceedings and their determinations touching all matters properly cognizable before them and all the books, accounts, vouchers, papers and documents, touching the business of the county, shall be carefully kept by the clerk, and open to the inspection of any person.

Records.

SEC. 13. Such commissioners shall sit with open doors, and when they have no court house, or it shall be unfit or inconvenient, they may hold their meetings at any other suitable place at the county seat.

Commissioners to meet at county seat.

SEC. 14. Such commissioners shall cause a court house, jail, and public offices for the clerk, register, treasurer, and sheriff, to be erected and furnished, when the county funds will admit, and for that purpose the commissioners are authorized to assess a tax of two mills to the dollar on each and every kind of property, real, and personal, taking the assessors list of the same year as the value thereof.

Court House, when to be erected.

SEC. 15. Such commissioners shall annually allow the clerk of the county, or board of commissioners, and sheriff, such sum, or sums, as they may think reasonable for their extra service, which shall in no one year exceed one hundred dollars.

Salary of Clerk and Sheriff.

SEC. 16. In all cases where lands have been granted to any county, for the purpose of a county seat, and any part thereof has been sold and the purchase money, or any part thereof, shall be due and unpaid, all proceedings necessary to be had to recover possession of any such lands, or to enforce the payment of the purchase money, shall be instituted in the name of the proper county.

Suits to be brought in name of county.

SEC. 17. When any claim exists, for money advanced by any county officer, for the use and benefit of the county, pursuant to the provisions of law, or of any order of said board, or when there shall be any claim due to any commissioner, for locating the seat of justice of the county, such claim shall have preference, and be paid by the treasurer out of any money in his hands at the time,

What claims have preference.

or any money which may first come into his hands after the presentment of the order therefor.

SEC. 18. When any judgement shall be obtained against the county, the public property of the county shall be liable therefor, but no execution shall issue, until the board shall have a reasonable time to assess and collect a sufficient amount of revenue to pay and discharge such judgment, in addition to the ordinary expenses of the county.

SEC. 19. The board of commissioners at their July term in every year, shall make a fair and accurate statement of the receipts and expenditures of the preceding year, and enter the same of record, and shall cause copies thereof, to be posted up at the court house door, and at one public place in each precinct in the county.

Annual statement.

Fees of clerk.

SEC. 20. The clerk of the court shall be allowed twenty cents for each hundred words, for making out each copy required by the preceeding section.

Appeal to District Court.

SEC. 21. From all decisions of such commissioners, there shall be allowed an appeal to the district court by any person aggrieved, but if such person shall not be a party thereto, such appeal shall not be granted, unless he shall file in the office of the county clerk, his affidavit, setting forth that he has an interest in the matter decided, and that he is aggrieved by such decision, alleging explicitly the nature of his interest.

Appeal and Bond.

SEC. 22. Such appeal shall be taken within thirty days after the time such decision was made, by the appellant filing with the clerk of the county court a bond with sufficient penalty and sureties, to be approved by said clerk with condition for the due prosecution of such appeal, and the payment of all costs if the same shall be adjudged against said appellant.

Transcript.

SEC. 23. Within twenty days after the filing of such appeal bond, the clerk shall make out a complete transcript of the proceedings of said board relating to the decision appealed from, and shall deliver the same, and all papers and documents filed in such proceedings and the appeal bond, to the clerk of the district court.

Cause, when to be tried.

SEC. 24. If, such appeal shall be filed ten days before the first day of the court, next after such appeal, such cause shall stand for trial at such term, otherwise it shall be continued at the request of either party until the next term of the court.

Appeals, how docketed

SEC. 25. All appeals thus taken to the district court, shall be docketed among the other causes pending therein, and the same shall be heard and determined as original causes.

Final determination.

SEC. 26. Such court may make a final determination of the proceeding thus appealed, and cause the same to be executed, or may send the same down to such board with an order how to proceed, and may require such board to comply with the final determination made by such court in the premises.

Approved January 23, 1856.

CHAPTER XXIV.

DUTIES OF SHERIFFS AND OTHER OFFICERS.

SEC. 1. It is the duty of the sheriff and his deputies to serve or otherwise execute according to law and return writs, or other legal process issued by lawful authority and to him or them directed or committed and to perform such other duties as may be required of him by law.

Duty of Sheriff and deputies.

SEC. 2. His disobedience of the command of any such process is a contempt of the court from which it issued, and may be punished by the same accordingly, and he is further liable to the action of any person injured thereby.

Contempt, how punished.

SEC. 3. He shall have charge, and custody of the Jail and the prisoners in the same, and is required to receive those lawfully committed, and to keep them himself or by his deputy Jailer until discharged by law.

Custody of Jail.

SEC. 4. The sheriff and his deputies are conservators of the peace and to keep the same or to prevent crime, or to arrest any person liable thereto, or to execute process of law may call any person to his aid and when necessary the sheriff may summon the power of the county.

Conservators of the peace.

SEC. 5. The sheriff shall attend upon the district court at its sessions in his county, and he is allowed the assistance of two constables, and of such further number as the court may direct, and shall attend the sessions of the Judge of Probate of the county when required by him.

Attend District and Probate Courts

SEC. 6. No sheriff or his deputy or constable shall appear in any court as attorney or counsellor for any party, nor make any writing or process to commence or to be in any manner used in the same, and such writing or process made by any of them shall be rejected.

Not to appear as attorney.

SEC. 7. No sheriff or his deputy or constable shall become the purchaser, either directly or indirectly of any property by him exposed to sale under any process of law or equity; and every such purchase is absolutely void.

Purchase of property at public sale, forbidden.

SEC. 8. Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office; and in case of a vacancy occurring in the office of sheriff from any cause his deputies shall be under the same obligation to execute legal process then in his or their hands, and he and they will remain liable under the provisions of law as in other cases.

Vacancy.

SEC. 9. When a sheriff goes out of office he shall deliver to his successor all books and papers pertaining to the office and property attached or levied upon, (except as provided in the preceding section,) and all prisoners in jail, and take his receipt specifying the same, and such receipt shall be sufficient indemnity to the person taking it.

Books and papers.

SEC. 10. The sheriff of each county, or his deputies, shall assess the property thereof in pursuance to the requirement of the law, and the stationery and the printing requisite in the discharge

Stationary and printing.

of the duties as required by this section, shall be paid for from the county treasury.

Constable may
act as Sheriff.

SEC. 11. It is the duty of such constable as the county clerk may designate, to perform all the duties of the sheriff, when there is no sheriff, and in cases when exception is taken to the sheriff, as provided in the next section.

Same.

SEC. 12. In all the proceedings in the courts of record, where it appears from the papers that the sheriff is a party, and wherein any action commenced, or about to be commenced, an affidavit is filed with the clerk of the court, stating a partiality, prejudiced, consanguinity or interest on the part of the sheriff, the clerk or court, shall direct process to such constable as the probate Judge may designate, whose duty it shall be to execute it in the same manner as if he were sheriff.

Duties as Coroner.

SEC. 13. The sheriff shall also perform the usual duties of coroner of his county, so far as regards inquest upon dead bodies.

Approved January 26th, 1856.

CHAPTER XXV.

AUDITOR OF PUBLIC ACCOUNTS, TREASURER AND LIBRARIAN.

Auditor's bond
and oath.

Office and furniture.

Duties.

Report.

SEC. 1. Before the auditor enters on his duties, he shall give bond to the Territory of Nebraska, in the sum required by law, for the faithful discharge of the duties of his office, to be approved by the Governor, and he shall take and subscribe the usual oath required by law, and deliver over to his successor in office all books, papers, records, vouchers, presses and furniture appertaining to such office, and his bond shall be filed in the office of the secretary of the Territory, and be by him recorded.

SEC. 2. The auditor shall be the general accountant of the Territory, and the keeper of all public accounts, books, vouchers, documents, and all other papers relating to the accounts and contracts of the Territory, and its revenue and fiscal affairs, not required by law to be kept in some other office, or by some other person.

SEC. 3. He shall report to the General Assembly at each regular session :

Auditor's duties

1st—A full statement of the revenue and the expenditure thereof for the preceding year ;

2nd—A complete statement of the public debt.

3d—A statement showing separately the amount of each appropriation of money made by law

SEC. 4. The auditor shall :

1st—Audit all claims against the Territory, payable out of the treasury thereof, except such as are required to be adjusted and settled by law, by some other person ;

2nd—Draw all warrants for money payable out of the Territorial treasury ;

- 3d—Audit and settle the accounts of all persons collecting the revenue of the Territory, or holding the money thereof ;
- 4th—Keep the accounts between the Territory and the treasurer ;
- 5th—He shall keep an account of all debts and credits between the Territory and the United States, and between the Territory and every State, sovereignty, community, officer or person with whom the Territory may have dealings ;
- 6th—He shall direct prosecutions, by the attorney-general, in the name of the Territory, against all delinquents in relation to revenue payable into the Territorial treasury, and against all persons that may become possessed of any money or property belonging to the Territory ;
- 7th—He shall give information in writing, to either House of the Territorial Legislature, upon any subject in relation to the fiscal affairs of the Territory, suggesting any amendments of existing law, relative to the levying and collecting of the public revenue ;
- 8th—He shall perform all other duties that may be required of him by law.

SEC. 5. When any bond of the auditor shall be broken, the attorney-general, or any person injured by such breach, may institute suit thereon in the name of the Territory, to his use, and any recovery thereon shall not render the bond valid ; but other breaches thereof may be assigned and prosecuted, until the whole amount of the penalty shall be recovered. Breach of bond.

SEC. 6. The auditor shall in person sign all warrants for money on the treasurer, and they shall be countersigned by the treasurer, before they are delivered to the person to whom they shall be payable. Shall sign warrants.

SEC. 7. The auditor shall keep a fair record of all warrants drawn by him on the treasury, together with their dates and amounts, and to whom payable, and out of what fund the same are payable, numbering them. Record of warrants.

SEC. 8. If any warrant drawn on the treasury be lost, mislaid or destroyed, it shall be lawful for the auditor to issue a duplicate warrant to the person so having lost the warrant, on his filing an affidavit of such loss or destruction in writing, sworn to before some judge or justice of the peace of the Territory, and the auditor and treasurer shall write over the entry of the warrant the words, "lost," "mislaid," or "destroyed," as the case may be. Shall issue duplicates—when lost.

SEC. 9. The treasurer shall keep an accurate account of the receipts and disbursements of the treasury, in books to be kept for that purpose, in which he shall specify the names of the persons from whom money has been received, and on what account. Duty of Treasurer.

SEC. 10. He shall give to the person paying money into the treasury, duplicate receipts, stating the fund to which the money belongs, one of which may be kept by the person paying, and the other must be delivered to the auditor, in order to obtain the proper credit, and the amount shall be charged to the treasurer. His receipts.

SEC. 11. The treasurer shall pay no money out of the treasury but upon the warrant of the auditor, and shall pay such warrants agreeable to their numbers. Warrants, how paid.

Shall certify to Auditor.

SEC. 12. He shall, once in every three months, certify to the auditor the number, date, amount, and payee of each auditor's warrant, taken up by him.

Report to Governor.

SEC. 13. He shall, one month before the meeting of each General Assembly, report to the Governor the state of the treasury, up to that date, exhibiting the amount received, and paid out since his last report, and the balance remaining in the treasury.

His expenses.

SEC. 14. The expenses of the treasurer are to be audited like other claims on the Territory, and paid by the Territory.

Salary.

SEC. 15. The salary of the treasurer shall be one hundred and fifty dollars annually, to be audited like other claims on the Territory, and paid semi-annually out of any money in the treasury not otherwise appropriated; and he may receive fees allowed by law, but no others.

Duty of Librarian.

SEC. 16. The librarian is to have charge and custody of all books, maps, charts, engravings, papers, and paintings belonging to the library, and directed to be deposited therein, and shall preserve the same, and also shall keep a file of each of the newspapers published in the Territory, at the expense of the Territory.

His bond.

SEC. 17. He shall, before he enters on the duties of his office, give bond with approved security in the sum of ten thousand dollars, payable to the Territory of Nebraska, for the faithful performance of his duty, and for rendering up to his successor all the property belonging to the Territory and in his office.

Bond of the Treasurer.

SEC. 18. The treasurer shall give bond required by law, with at least four securities to be approved by the Governor, for the faithful performance of his duty, and shall take the oath required by law.

Approved January 26, 1856.

CHAPTER XXVI.

ASSESSOR.

Time of commencing assessment.

SEC. 1. The assessor of each county in this Territory shall commence the assessment of his county on the first day of August in each year, and go into all parts of his county, and assess the taxable property of each person, who had the same within the Territory, on the first day of August of the year the assessment is made.

Assessment to be verified by oath.

SEC. 2. He shall obtain a true and correct list of the property, both real and personal, belonging to each person residing in his county, and every person owning property is required to assist the assessor in making the list of his property, and he is required to swear each person he assesses, to the correctness of his list.

Property to be listed separately.

SEC. 3. He shall make a separate list of the personal property from the real estate, and village, town, and city lots shall be listed separately from other real estate.

Non residents.

SEC. 4. If any person reside in one county, and have property taxable in another, such person shall give a list thereof to the

assessor, stating particularly what county the property is in, and the assessor shall list all such property separately from the other property, and when he has completed the assessment of his county, he shall make out a list of all property assessed that is in another county, and send such list to the assessor of the county in which the property is, and when the assessor receives such list, he shall, if the same has not been listed for that year, list the same in all respects as he would property given in by a resident of the county.

SEC. 5. The assessor shall deliver to any person assessed for taxation, upon demand thereof, by the owner of the property, a true copy of the assessment, written and signed by himself, and he shall in all cases where the assessment is made in the absence of the owner of property assessed, leave a list of his assessment with some member of his family.

Assessor to deliver copy.

SEC. 6. If in any case any lands or town lots have not been assessed for any one year, or series of years, the assessor shall assess the same when discovered, for the past years that have not been assessed, showing particularly the years such property has not been assessed, and make return thereof, as in other cases of assessment.

May assess for arrearages

SEC. 7. The assessor shall value and assess all property on the tax roll, according to its marketable value in cash at the time of the assessment.

Assessment to be of full value.

SEC. 8. The assessor shall, by personal application, or by written request, to be left at the usual residence of the owner or person who has charge of any taxable property, require such owner or person to deliver to such assessor a full and correct list thereof, and every such person shall deliver a full and complete list of such property to the assessor within ten days, and upon his failing to give such list, shall be liable to a fine not exceeding one hundred dollars, and his property shall be taxed three times the amount of his proper tax for that year.

Assessor may require list.

SEC. 9. If there be taxable property in any county, and from any cause the same shall not be assessed by the assessor before he make return of the assessment for the year, he shall when the same shall be discovered, assess such property, make out a list upon his own view or upon the best information he can get, and make return of such assessment as in other cases, and for that purpose he may examine the owners or other persons on oath touching such property.

May make subsequent return.

SEC. 10. It shall be the duty of the clerk of the county commissioners in the respective counties in this Territory, to procure from the United States' land office, at which the lands in such counties are subject to entry, a complete list of lands entered in such county, up to the first day of July in each year, and also to procure an abstract of all the conveyances in said county, of real estate, up to the first day of July, as appears from the records of the register of deeds, giving the names of the purchasers and vendors, and a description of the same, which shall be delivered to the assessor on the first Monday in August.

To procure list of entered lands.

SEC. 11. The county clerk shall, in the month of July in each

County Clerk to deliver tax roll to assessor.

Clerk may make copy of assessment.

Assessor to make a complete list.

Tax list to contain all names.

How appeal may be taken.

Tax roll how corrected.

Clerk to make abstract.

Assessor, how removed.

Stock, how assessed.

Corporate taxes, how collected.

year, deliver to the assessor the tax roll for the preceding year, and take the receipt of the assessor therefor.

SEC. 12. If the assessor fail to return the tax roll, or the abstract furnished by the clerk, or return the same in a mutilated condition, the clerk may cause new copies thereof to be made, and charge the assessor for the same, and the commissioners may withhold as much of his compensation for assessing, as will pay for such new copies.

SEC. 13. The assessor, on an examination of the lists of property delivered to him by individuals, the abstracts of conveyances furnished him by the clerk, and the tax roll of the preceding year, shall make out in alphabetical order, a complete list of all the taxable property in his county.

SEC. 14. The tax roll shall contain the names of all persons to whom property has been assessed; it shall be in tabular form, with suitable caption, and separate columns for the names of the owners, and of each kind of property taxed; such tax roll shall be so arranged, as to show the aggregate amount of territorial and county revenue derived from the different objects of taxation.

SEC. 15. The assessor shall, by the first day of September in each year, make out a fair copy of the tax roll, and deposit the same in the office of the county clerk, and the county commissioners shall, on the first Monday in October following, hear and determine all appeals that may be made from the assessor's roll, and if such commissioners be absent, or from any other cause unable to hear such appeals, the county clerk shall hear and determine such appeals, and every person who may think himself aggrieved, may appeal from the assessment of the assessor, to the commissioners, and every appeal shall be in writing, and state specifically the grounds of appeal.

SEC. 16. The tax roll shall be corrected by the commissioners, and as soon as the same shall be corrected, the clerk shall make out a fair copy thereof, signed by him for the use of the collector.

SEC. 17. The clerk shall, at the the same time that he makes out a copy of the tax roll as adjusted, make out an aggregate abstract of the tax roll, placing each kind of property under its appropriate head, with the aggregate valuation thereof.

SEC. 18. Every assessor who shall fail to perform the duties enjoined upon him by law, may be removed by the commissioners from office, and another appointed in his stead, and he shall be liable to pay a fine not exceeding five hundred dollars.

SEC. 19. Any person owning shares of stock in any incorporated or other companies, or associations, need not deliver to the assessor a list of the same, but the president or other chief officer shall deliver to the assessor, a list of all the shares owned by any person therein, and the name of the person owning the same.

SEC. 20. Taxes assessed on shares of stock embraced in such list, shall be paid by the president or other chief officer of such corporation, company, or association, and the same may be recovered from the owners of such shares, or the same may be deducted from the dividends accruing on such shares, and the tax paid by

the corporation shall be a lien upon such shares respectively, and must be paid before any transfer of the same can be made.

Approved January 26, 1856.

CHAPTER XXVII.

OFFICERS.

SEC. 1. No person shall be elected a delegate to Congress of the United States from this Territory who shall not have resided therein at least twelve months before the time of voting. Delegate to Congress.

SEC. 2. No person shall be eligible to a seat in either branch of the General Assembly, unless he be a resident of the Territory, and shall have actually resided in the county or district in which he is a candidate at least six months before the day of election. General Assembly.

SEC. 3. And no person shall be elected or appointed to any county or precinct office unless he shall have resided therein, at least two months before the day of election. County or precinct officers.

SEC. 4. Neither shall any person be entitled to hold any office of trust, or profit, in the Territory, unless he be a free white male citizen of the United States, and over the age of twenty-one years. Age.

SEC. 5. The term residence, as used in this chapter, shall be understood so as to exclude all married persons from office, unless their families are living in this Territory, and have their habitation and domicils therein, and when applied to young, or unmarried men, to their continued abiding place, and where they have their washing, bed and board. Residence.

Approved January 26th, 1856.

CHAPTER XXVIII.

REMOVAL FROM OFFICE.

SEC. 1. All county officers, including justices of the peace, may be charged, tried, and removed from office for official misdemeanors in the manner and for the causes following: *First*—for habitual or willful neglect of duty; *Second*—for gross partiality; *Third*—for oppression; *Fourth*—for extortion; *Fifth*—for corruption; *Sixth*—for willful mal-administration in office; *Seventh*—for conviction of a felony; *Eighth*—for habitual drunkenness. Officers, how removed.

SEC. 2. Any person may make such charge, and the board of commissioners shall have exclusive original jurisdiction thereof by a summons. Charges.

SEC. 3. The proceeding shall be as nearly like those in other actions as the nature of the case admits, excepting where otherwise provided in this chapter. Mode of procedure.

SEC. 4. The complaint shall be by an accuser against the accused, and shall contain the charges with the necessary specifica-

Complaint, how brought.	tions under them, and be verified by the affidavit of any elector of the Territory that he believes the charges to be true.
Copy of complaint.	SEC. 5. It will be sufficient that the summons require the accused to appear and answer the complaint of A. B. (naming the accuser) for "official misdemeanors;" but a copy of the complaint must be served with the summons.
Motion to dismiss.	SEC. 6. No answer or other pleading after the complaint is necessary, but the defendant may move to reject the complaint or demur thereto upon any ground, rendering such motion or demurrer proper; and he may answer if he desires, and if he answer, the accuser may reply or not, but if there be an answer and reply, the provisions of this Statute relating to the pleadings in actions shall apply.
Judgment of removal.	SEC. 7. The questions of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant; and the clerk shall enter a copy of the judgment in the election book.
Costs.	SEC. 8. The accuser and the accused are liable to costs as in other actions.
Vacancy.	SEC. 9. When the accused is an officer of the court, and is suspended, the court may supply his place by appointment for the term.
	Approved January 23rd, 1856.

CHAPTER XXXI.

OF REAL ESTATE AND THE ALIENATION THEREOF BY DEED.

Witness to deeds required.	SEC. 1. Deeds of real estate or of any interest therein in this Territory, except leases for one year or for a less time, must be signed by the grantor, being of lawful age, in the presence of at least one competent witness, who shall subscribe his name as a witness thereto, and acknowledged or proved and recorded as directed in this chapter.
Acknowledgment.	SEC. 2. The grantor must acknowledge the instrument to be his voluntary act and deed.
By whom taken.	SEC. 3. The acknowledgment must be made or proved, if in this Territory, before a judge or clerk of any court, or some justice of the peace, or notary public therein; but no officer can take any such acknowledgment or proof out of his territorial jurisdiction.
If in any other State or Territory.	SEC. 4. If acknowledged or proved in any other State, or Territory, or district of the United States, it must be done according to the laws of such State, Territory, or district, and must be acknowledged or proved before any officer authorized to do so, by the laws of such State, Territory, or district, or before a commissioner appointed by the Governor of this Territory for that purpose.
Certificate.	SEC. 5. In cases provided for in the last section, unless when taken before such commissioner, the deed shall have attached

thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which it was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment or proof, was at the date thereof, such officer, as he is therein represented to be; that he is well acquainted with the hand-writing of such officer, and that he believes the signature of such officer to be genuine, and that the deed is executed and acknowledged, or proved according to the laws of such State or Territory.

SEC. 6. If such deed be executed in a foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge des affaires, commissioner, commercial agent, or consul of the United States appointed to reside therein, which acknowledgement shall be certified thereon by the officer taking the same, under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

Foreign Deeds.

SEC. 7. If the grantor die before acknowledgement, or if for any cause his attendance cannot be procured in order to make the same, or having appeared he refuses to acknowledge it, proof of the execution and delivery of the deed may be made by any competent subscribing witness thereto before any officer authorized to take the acknowledgment; and the witness must state upon oath, his own place of residence, that he set his name to the deed as a witness, that he knew the grantor in such deed, and saw him sign or heard him acknowledge he had signed the same, and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such deed.

In case of death of grantor.

SEC. 8. The officer has power to issue the necessary subpoenas for the subscribing witnesses, residing in the same county, to appear before him for the purpose aforesaid.

Witnesses.

SEC. 9. Every person who, being served with such subpoena, and having been tendered the fees of a witness in a justice's court, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured one hundred dollars; and may also be committed to prison by the officer who issued such subpoena, there to remain without bail until he shall submit to answer upon oath as aforesaid.

Forfeiture and imprisonment.

SEC. 10. If all the subscribing witnesses shall be dead, or out of the Territory, such death or absence is first to be proved, and then the execution of the deed may be proved before such officer, by proving the hand-writing of the grantor, and of any subscribing witness to such deed.

Absence or death.

SEC. 11. Any person interested in a deed, that is not acknowledged, may at any time, before or during the proceedings before such officer, file in the office of the register of deeds of the county where the lands lie, a copy of the deed, compared with the original by the register, which shall, for the space of thirty days thereafter, have the same effect as the recording of the deed, if such deed shall within that time be duly proved and recorded.

Copy of deed may be filed,

Certificate.

SEC. 12. Every officer who shall take the acknowledgment or proof of any deed, shall endorse a certificate thereof, signed by himself, on the deed; and in such certificate shall truly and specifically set forth the matters herein-before required to be done, known, or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence and the substance of the evidence by them given.

Certificate is evidence.

SEC. 13. Every deed acknowledged or proved, and certified by any of the officers before named, including the certificate specified in Sec. 5 of this chapter, whenever such certificate is required by law, may be read in evidence without further proof, and shall be entitled to be recorded. The record of a deed duly recorded, or a transcript thereof duly certified, may also be read in evidence with the like force and effect as the original deed, whenever, by the party's oath or otherwise, the original is known to be lost, or not to belong to the party wishing to use the same, nor within his control. Neither the certificate of the acknowledgment, or of the proof of any deed, nor the record, or transcript of the record of such deed, shall be conclusive, but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of a deed, shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such deed, nor the record thereof, shall be received in evidence until established by other competent proof.

Certificate to be recorded.

SEC. 14. The certificate of the proof or acknowledgement of every deed, and the certificate of the genuineness of the signature of any officer, in the cases where such last mentioned certificate is required, shall be recorded, together with the deed so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such deed, nor the transcript thereof, shall be read, or received in evidence.

Time of recording.

SEC. 15. Every deed entitled by law to be recorded, shall be recorded in the order, and as of the time when the same shall be delivered to the register for that purpose, and shall be considered as recorded from the time of such delivery.

Time of taking effect.

SEC. 16. All deeds, mortgages, and other instruments of writing, which are required to be recorded, shall take effect and be in force from and after the time of delivering the same to the register for record, and not before, as to all creditors and subsequent purchasers in good faith without notice: and all such deeds, mortgages, and other instruments, shall be adjudged void, as to all such creditors and subsequent purchasers without notice, whose deeds, mortgages, and other instruments, shall be first recorded: *Provided*, That such deeds, mortgages, or instruments, shall be valid between the parties.

How lawfully recorded.

SEC. 17. They shall not be deemed lawfully recorded unless they have been previously acknowledged, or proved, in the manner herein prescribed.

Index, how kept.

SEC. 18. The register of deeds must keep an index, the pages of which are so divided as to show in parallel columns:

First—The grantor.

Second—The grantee.

Third—The time when the instrument was filed.

Fourth—The date of the instrument.

Fifth—The nature of the instrument.

Sixth—The book and page where the record thereof may be found.

Seventh—The description of the lands conveyed, in the following manner :

A. B. E. F. I. J.	Grantors.
C. D. G. H. L. M.	Grantees.
1855. Jan. 1, Oct. 7, Nov. 3.	Date of filing.
1855. Jan. 1, June 4, Dec. 4.	Date of instrument.
Deed, Deed, Mortgage.	Character of instrument.
No. 1.	Book.
225.	Page.
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$, Sec. 3, T. 1, R. 2 W. Lot 52, in Omaha City, Block 5, S. $\frac{1}{2}$, Sec. 10, T. 6, R. 3 W.	Description.

SEC. 19: The register must endorse upon every instrument properly filed in his office for record, the minute, hour, day, month and year, when it was so filed and shall forthwith make the returns in the index provided for in the last preceding section, except that of the book and page where the record

Endorsement of
time of registry
on instrument.

of the instrument may be found, and from that time such entries shall furnish construction notice to all the world of the rights of the grantee, conferred by such instrument.

Entries in index
to be double.

SEC. 20. The entries in such index shall be double, the one showing the names of the respective grantors arranged in alphabetical order ; the other those of the grantees in like order. When there are two or more grantors having different surnames, there must be as many distinct entries among the grantors, as there are different names, being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantees.

Deeds must be
recorded in
same county.

SEC. 21. Deeds and other instruments relating to or affecting the title of real estate in this Territory, shall be recorded in the county in which such real estate, or any part thereof, is situated ; but if such county is not organized, then in the county to which such unorganized [county] is attached for judicial purposes.

Revocation.

SEC. 22. No instrument containing a power to convey, or in any manner to affect real estate, certified and recorded as above prescribed, can be revoked by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and deposited for record, and entered on the index book in the same office in which the instrument conferring the power is recorded.

Official seal,
when not neces-
sary.

SEC. 23. It shall be no objection to the record of a deed, that no official seal is appended to the recorded acknowledgment or proof thereof, if, when the acknowledgment or proof purports to have been taken by an officer having an official seal, there be a statement in the certificate of acknowledgment or proof that the same is made under his hand and seal of office, and the records show by a scroll or otherwise, that there was such a seal, which shall be presumptive evidence that the official seal was attached to the original certificate.

Loss of deeds or
records.

SEC. 24. The copy of any record, or of any recorded deed or instrument attested and authenticated in such manner, as would by law entitle it to be read in evidence, may on proof of the loss of the original and of the record, be again recorded, and such record shall have the same effect as the original record.

Wills may be
recorded.

SEC. 25. Any will of real estate which shall have been duly proved in the probate court of any county in this Territory, and any such will the proof of which shall be contested in that court and carried up by appeal or otherwise, and the validity of which shall be finally established, may, with the certificate of proof annexed thereto be recorded in the office of the register of deeds of the county or counties where the said real estate lies, in the same manner and with like effect as in case of deeds.

Decree and
judgment.

SEC. 26. Any exemplification of any decree or judgement in partition on final decree in chancery affecting real estate, may in like manner be recorded in the register's office in any county, in which any real estate described therein may be situated ; such record or exemplification thereof shall be received in evidence, and shall be as effectual in all cases as the original exemplification would be if produced, and shall be open to the same objection.

SEC. 27. On recording any such will, exemplification or de-

cree, the register shall index the same with the indices of deeds, and as near as may be as deeds are to be indexed: placing the name of the devisor, petitioner or plaintiff, with the grantors, and the devisee or defendant with the grantees.

How indexed.

SEC. 28. Different sets of books shall be provided, by the registers of the several counties, for the recording of deeds and mortgages; in one of which sets, all conveyances absolute in their terms, and not intended as mortgages, or as securities, in the nature of mortgages, shall be recorded; and in the other set, such mortgages and securities shall be recorded.

Register to procure books.

SEC. 29. Every deed conveying real estate, which, by any other instrument in writing, shall appear to have been intended, only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; and the person for whose benefit such deed shall be made, shall not derive any advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also recorded therewith, and at the same time.

Deed when considered in the nature of a mortgage.

SEC. 30. The register of deeds shall keep an index of all mortgages and discharges of mortgages left for record and entitled to be recorded, in the same form as is required in case of deeds.

Index of mortgages.

SEC. 31. Any mortgage that has been, or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Mortgage, how discharged.

SEC. 32. Any mortgage shall also be discharged upon the record thereof, by the register of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as herein before prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Same.

SEC. 33. Every such certificate, and the proof or the acknowledgement thereof shall be indexed in the order of mortgages and recorded at full length; and in the record of discharge, the register shall make a reference to the book and page where the mortgage is recorded.

Same.

SEC. 34. If any mortgagee or his personal representative or assignee, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute or acknowledge a certificate of discharge, or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in an action on the case.

Damages in case of refusal to discharge.

Duty of register.

SEC. 35. The register when presented with an abstract of

1. Any judgment,
2. A mechanics lien,
3. The service of an attachment,
4. The levy of an execution, any of which establishes a lien upon real estate; or with

5. A notice of his pendens in chancery; shall enter in a proper book to be kept for that purpose the substantial parts of such abstract, so as to show the manner of the parties to such liens and notices, the amount of the judgement or indebtedness, by what court the judgement was rendered, or the attachment or execution was issued, and in what court the suit in chancery is pending, together with a general description of the estate to be affected by the lien or notice.

Lien book.

SEC. 36. The book in which said entries shall be made is to be called the "Lien Book," and such entry shall be deemed constructive notice to all persons of the facts set forth therein from the date of the receipt for entry.

Claims.

SEC. 37. The provisions of this chapter shall apply to the conveyance of all claims and improvements upon the public lands.

Conveyance,
when void.

SEC. 38. No grant or conveyance of lands, or interest therein, shall be void for the reason that at the time of the execution thereof, such lands shall be in the actual possession of another, claiming adversely.

Instrument, how
revoked.

SEC. 39. No instrument containing a power to convey, or in any manner to affect real estate, executed, acknowledged or proved, and certified and recorded in conformity with the requirements of this chapter, can be revoked by any act of the party or parties thereto, until the instrument or revocation is executed, acknowledged or proved and certified and filed for record with the register of deeds for the county in which the power is recorded.

Where record-
ed.

SEC. 40. The register shall mark upon the deed or instrument after recording the same, the book and page in which the same is recorded.

Governor may
appoint Com-
missioners.

SEC. 41. The Governor of this Territory may commission so many commissioners in such of the States and Territories of the United States, or in the District of Columbia, as he may deem expedient, not exceeding one in any one city or county, who shall continue in office four years, and shall have authority to take the acknowledgment and proof of the execution of any instrument in writing, conveying real estate or any interest therein, or affecting the same, lying in this Territory; or of any assignment, transfer, power of attorney, satisfaction of a judgment, or of a mortgage, or of any other writing to be used or recorded in this Territory; also to administer an oath or affirmation to any person who may desire it.

Acknowledg-
ment, when
valid.

SEC. 42. Any acknowledgment or proof taken in pursuance of the powers hereby conferred, and in accordance with the provisions of this chapter, and certified by the commissioner, under his hand and official seal upon the instrument mentioned in the preceding section, shall, when authenticated as hereinafter mentioned, be entitled to be recorded in the office of the register of

deeds, and shall have the same force and effect and be as available as if taken or made before any officer by this chapter authorized to take proofs or acknowledgments, residing in this Territory; and any affidavit or affirmation so made before any such commissioner, certified and authenticated as aforesaid, may be read in evidence, and shall be as good and effectual to all intents, as if taken and certified by an officer authorized to administer oaths, residing in this Territory.

SEC. 43. Every commissioner appointed as aforesaid, shall, before he performs any duty by virtue of his appointment and of this law, take and subscribe an oath or affirmation before some officer authorized to administer the same, well and faithfully to perform all the duties of such commissioner, under and by virtue of the laws of Nebraska; which oath or affirmation shall be filed in the office of the Secretary of Nebraska. And every such commissioner shall also, before he enters upon the duties of his office, cause to be prepared an official seal, on which shall be designated his name, and the words, "a commissioner for Nebraska," together with the name of the State or Territory, city and county within which he shall reside, and for which he shall have been appointed, and shall transmit to and cause to be filed in the office of said Secretary a distinct impression of such seal taken upon wax or some other substance capable of receiving and retaining a clear impression, together with his signature in his own proper hand writing.

Commissioners,
how to qualify.

SEC. 44. When any deed or other instrument shall be proved or acknowledged, or any oath or affirmation shall be taken before any commissioner appointed by virtue of this act, before it shall be entitled to be used, recorded or read in evidence; in addition to the preceding requisites, there shall be subjoined or affixed to the certificate, signed and sealed by each commissioner as aforesaid, a certificate under the hand and official seal of the Secretary of Nebraska, certifying that such commissioner was, at the time of taking such proof or acknowledgment, or of administering such oath or affirmation, duly authorized to take the same, and that the Secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate, with the impression of the seal of such commissioner deposited in his office, and that he verily believes the signature and the impression of the seal of the said certificate to be genuine.

Certificate of
Secretary of Ter-
ritory.

SEC. 45. No commissioner appointed under or by virtue of this law, shall be authorized to take the proof or acknowledgment of any deed or instrument, or to administer any oath or affirmation at any place other than that within which he shall reside, or for which he shall have been appointed, and every certificate of any such commissioner to any proof or acknowledgment taken before him, or to any oath or affirmation administered by him, shall specify the day on which, and the city, or town and county within which the same was taken or administered; and without such specification, the said certificate shall be void.

Time and date
of certificate.

SEC. 46. No acknowledgment of any conveyance having been

Acknowledgments, how taken.

executed, shall be taken by any officer, unless the officer taking the same, shall know or have satisfactory evidence that the person making such acknowledgment, is the person described in and who executed such conveyance.

Assignment of mortgage.

SEC. 47. The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them to the mortgagee.

Penalty for frauds.

SEC. 48. All certificates of the register and recorder of any United States' land office, for the entry or purchase of any tract of land, and all letters patent of land from the United States, of lands lying in this Territory, may be recorded in the county in which the land lies, and the record of such certificates and patents, and all copies thereof so recorded, duly certified by the register, shall be prima facie evidence of the existence of such certificates and patents, and as conclusive evidence of the existence of such record.

SEC. 49. Every officer within this Territory, authorized to take the acknowledgment or proof of any conveyance, and every register of deeds who shall be guilty of knowingly stating an untruth, or guilty of any malfeasance, or fraudulent practice in the execution of the duties prescribed to them by law, in relation to the taking, or the certifying the proof, or acknowledgment, or the recording, or certifying, any record of any such conveyance, mortgage, or instrument in writing, or in relation to the canceling of any mortgage, shall, upon conviction, be adjudged guilty of a misdemeanor, and be subject to punishment by fine, not exceeding five hundred dollars, and imprisonment, not exceeding one year, and shall also be liable in damages to the party injured.

Estate of a married woman.

SEC. 50. Any real estate belonging to a married woman, may be managed, controlled, leased, devised or conveyed by her by deed, or by will, in the same manner and with like effect as if she were sole.

Right of dower.

SEC. 51. To convey her right of dower, she must execute a deed with or without her husband.

Term, "Real Estate."

SEC. 52. The term "real estate," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements, and hereditaments," and as embracing all chattels real, except leases for a term not exceeding one year.

Purchaser.

SEC. 53. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any real estate or interest therein, shall be conveyed for a valuable consideration, and also any assignee of a mortgage, or lease, or other conditional estate.

Deed.

SEC. 54. The term "deed," as used in this chapter, shall be construed to embrace every instrument in writing, by which any real estate or interest therein is created, aliened, mortgaged, or assigned; or by which the title to any real estate may be affected in law or equity; except last wills, and leases for one year or for a less time.

Power of Attorney.

SEC. 55. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract

for the sale or purchase of lands, when proved or acknowledged, in the manner prescribed in this chapter, may be recorded in the office of the register of deeds of any county, in which the real estate, to which such power or contract relates, may be situated; and when so proved or acknowledged, and the record thereof when recorded, or the transcript of such record, may be read in evidence, in the same manner, and with the like effect, as a conveyance recorded in such county.

SEC. 56. A married woman shall not be bound by any covenant in a joint deed of herself and husband.

SEC. 57. The term "heirs," or other technical words of inheritance, shall not be necessary to create or convey an estate in fee simple. Heirs.

SEC. 58. Every conveyance of real estate shall pass all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used. Conveyance.

SEC. 59. When a deed purports to convey a greater interest than the grantor was at the time possessed of, any after acquired interest of such grantor, to the extent of that which the deed purports to convey, shall accrue to the benefit of the grantee. What interest passes.

SEC. 60. Estates may be created to commence at a future day.

SEC. 61. In the construction of every instrument creating or conveying, or authorizing, or requiring the creation or conveyance of any real estate, or interest therein, it will be the duty of the courts of justice to carry into effect the true interest of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law. Construction of instrument.

SEC. 62. Any alien may acquire and hold real estate or interest therein, by purchase, devise or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such real estate shall be held, conveyed, mortgaged or devised, or shall descend in like manner, and with like effect, as if such alien were a native citizen of the United States. Aliens may acquire.

Approved Jan. 26, 1856.

CHAPTER XXXII.

OF FRAUDULENT CONVEYANCES, AND CONTRACTS RELATIVE TO REAL ESTATE.

SEC. 1. Every conveyance of, or charge upon any estate, or interest in lands, or the rents and profits thereof, made or created with intent to defraud, prior or subsequent purchases for a valuable consideration, shall as against such purchasers be void. Conveyance when void.

SEC. 2. No such conveyance or charge, shall be deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice thereof, at the time of his purchase, unless it shall appear that the grantor in such conveyance, or person to be benefitted by such charge, was privy to the fraud intended. Subsequent purchaser.

Estate conveyed
must be by act
of law.

SEC. 3. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assessed, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same.

Power of testa-
tor.

SEC. 4. The preceding section shall not be construed to effect in any manner the power of a testator in the disposition of his real estate, by a last will and testament : nor to prevent any trust from arising or being extinguished by implication or operation of law.

Contracts, when
to be in writing.

SEC. 5. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made.

Powers of Court
of Chancery.

SEC. 6. Nothing in this chapter contained, shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements in cases of part performance.

Approved January 26th, 1856.

CHAPTER XXXIII.

OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE TO GOODS, CHATELS, AND THINGS IN ACTION.

When void.

SEC. 1. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Same.

SEC. 2. In the following cases every agreement shall be void ; unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith :

1st—Every agreement that, by its terms, is not to be performed within one year from the making thereof :

2nd—Every special promise to answer for the debt, default, or misdoings of another person :

3d—Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry : and

4th—Every special promise by an executor, or administrator to answer damages out of his own estate.

Same.

SEC. 3. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be void, unless,

1st—A note or memorandum of such contract be made in writing, and be subscribed by the party to be charged thereby : or

2nd—Unless the buyer shall accept and receive part of such goods or the evidences, or some of them, of such things in action : or

3d—Unless the buyer shall, at the time, pay some part of the purchase money.

SEC. 4. Whenever goods shall be sold at public auction, and the auctioneer shall, at the time of sale, enter in a sale book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last session. Goods sold at auction.

SEC. 5. Every sale made by a vendor of goods and chattels in his possession, or under his contract [control] and every assignment of goods and chattels, by way of mortgage or security or upon any condition whatever, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession, of the things sold, mortgaged or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith : and shall be conclusive evidence of fraud, unless it shall be made to appear, on the part of the persons claiming under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers. Sale, when presumed to be void.

SEC. 6. The term "creditors," as used in the last section, shall be construed to include all persons, who shall be creditors of the vendor or assignor; at any time whilst such goods and chattels, shall remain in his possession or under his control. Creditors.

SEC. 7. Nothing contained in the two last sections, shall be construed to apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels of goods, at sea, or in foreign ports, or upon the waters of a navigable stream, if the assignee or mortgagee shall take possession of such vessels or goods, as soon as may be after the arrival thereof. Reservation as to certain contracts.

SEC. 8. Every mortgage, or conveyance intended to separate as a mortgage, of goods and chattels hereafter made, which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage or a true copy thereof, shall be filed and recorded as directed by law. Mortgage, when void.

SEC. 9. Every mortgage filed and recorded in pursuance of this chapter shall cease to be valid as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof; unless within thirty days next preceding the expiration of the year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property mortgaged, shall be again filed and recorded in the office of the register of deeds. Mortgage, when to be renewed.

SEC. 10. A copy of any such original instrument, or any copy

When evidence. thereof, so filed as aforesaid, including any statement made in pursuance of this act, certified by the register in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or copy, and statement, was received and filed according to the indorsement of the register thereon, and of no other fact; and in all cases the original indorsement by the register, made in pursuance of this chapter upon such instrument or copy, shall be received in evidence only of the facts stated in such indorsement.

Approved January 26th, 1856.

CHAPTER XXXIV.

GENERAL PROVISIONS.

What assignments declared void.

SEC. 1. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or persons, of their lawful rights, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suit commenced, or decree or judgment suffered, with the like intent, as against the persons so hindered, delayed or defrauded, shall be void.

Same.

SEC. 2. Every grant or assignment of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same shall be void.

Void as to heirs.

SEC. 3. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this chapter, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representations or assignees of such creditors or purchasers.

Fraudulent intent.

SEC. 4. The question of fraudulent intent in all cases arising under the provisions of this chapter, shall be deemed a question of fact and not of law, nor shall any conveyance or charge be adjudged fraudulent, as against creditors or purchasers, solely on the ground, that it was not founded on a valuable consideration.

Same.

SEC. 5. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Lands, tenements &c.

SEC. 6. The term "lands," as used in this chapter, shall be construed as coextensive in meaning with, "lands, tenements and hereditaments," and the terms "estate and interest in lands," shall be construed to embrace every estate and interest, freehold and chattle, legal and equitable, present and future, vested and contingent in lands, as above described.

Conveyance.

SEC. 7. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing (except a last will and testament) whatever may be its form, and by whatever

name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

SEC. 8. The consideration of any contract or agreement, required by the provisions of the two preceding chapters to be in writing, need not be set forth in the contract or agreement, or in the note or memorandum thereof, but may be proved by any other legal evidence.

Consideration,
how proved.

SEC. 9. Every instrument required by any of the provisions of this and the two preceding chapters to be subscribed by any party, may be subscribed by his agent, thereunto authorized by writing.

Agent.

SEC. 10. The provisions of this chapter shall not extend to any conveyance, charge, contract, assignment or instrument or proceeding had, made, executed or commenced, before this chapter shall be in force as a law.

This act not re-
trospective.

Approved, January 26, 1856.

CHAPTER XXXVII.

OF WILLS.

SEC. 1. All persons of full age, except idiots and persons of unsound mind, may by will, dispose of their property.

Persons may
dispose of prop-
erty.

SEC. 2. Such will to be valid must be executed and attested in the following manner:

Will, how made
valid.

1. It shall be subscribed by the testator at the end of the will.
2. The subscription shall be made by the testator, in the presence of each of the attesting witnesses, or shall be acknowledged by him to them, to have been so made.
3. The testator at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament.
4. There shall be at least two attending witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

SEC. 3. The witnesses to any will, shall write opposite to their names their respective places of residence; and every person who shall sign the testator's name to any will by his direction, shall write his own name as a witness to the will. Whoever shall neglect to comply with either of these provisions, shall forfeit fifty dollars, to be recovered by any person interested in the property devised, who will sue for the same. Such omission shall not affect the validity of any will, nor shall any person liable to the penalty aforesaid, be excused or incapacitated on that account, from testifying respecting the execution of such will.

Subscribing
witnesses and
penalty.

SEC. 4. A devise must be to a person capable in law of holding the property devised; and if to a corporation, it must be to one expressly authorized by statute to take and hold by devise.

SEC. 5. Every will that shall in express terms dispose of all the estate of the testator, whether then owned or subsequently to

Will, how dispose of estate.

be acquired, or in any other terms denoting an interest to so devise it, shall be construed to pass all the estate which he was entitled to devise according to such intent.

Witness, how competent.

SEC. 6. If by any will, any real estate shall be charged with any debt, and the creditor whose debt is so charged, shall attest the execution thereof, such creditor, notwithstanding such charge shall be admitted as a competent witness to prove the execution of such will.

Attendance of witnesses compelled.

SEC. 7. In any case or matter before a Court of Probate, the attendance of witnesses may be compelled by subpoena, to be issued by that court which may be served as in cases before a district court; and a clause may be added to any such subpoena commanding any person having the custody of, or power over any will, to produce the same before the said court of probate, for the purpose of being proved.

Witness, how to be examined.

SEC. 8. When any one or more of the subscribing witnesses to such will shall be examined, and the other witnesses are dead, or reside out of the Territory, or are insane, and in cases where none of the witnesses reside in the Territory at the time of the hearing, then such proof shall be taken of the hand-writing of the testator, and of the witness or witnesses so dead, absent or insane, and of such other circumstances as would be sufficient to prove such will on a trial at law.

Court may allow or disallow will.

SEC. 9. On hearing the proofs for and against the allowance of a will, the court shall within one week from the hearing decide upon the case; if the decision be in favor of the validity of the will, and of the sufficiency of the proof thereof, it shall be allowed; if the decision be against its validity, or against such sufficiency, it shall be disallowed, and the decision, with the evidence in the case, shall be recorded, and if the will be contested, the reason for the decision shall also be recorded.

Certificate of proof required.

SEC. 10. Wills so proved shall have a certificate of such proof and allowance endorsed thereon, under the seal of the court; the record of such will, or a copy thereof, shall be received as evidence, to the same effect as the original would be.

Will to be recorded.

SEC. 11. The proofs and examinations taken under section 8, shall be signed, certified and recorded, together with the will, by the clerk, as herein before provided, and the will shall then be deposited with the executor.

Wills, where to be recorded.

SEC. 12. Authenticated copies of all wills that may have been proved and allowed, as provided for in this chapter, with the proceedings relating to such proof and allowance, may be recorded in any county where the testator may own real estate, in the book kept for the record of wills.

Probate, when conclusive.

SEC. 13. When any will shall have been proved before any Court of Probate of this Territory having jurisdiction, the jurisdiction over the executors, and the power of granting letters, with all powers incidental thereto, shall be exercised exclusively by the Court of Probate who first took the proof of such will.

SEC. 14. The Probate of any will shall be conclusive evidence of the due execution and validity thereof, until such Probate be reversed, or the will be declared void by a competent tribunal.

SEC. 15. Any beneficial devise, legacy, or gift whatsoever, in any will to a subscribing witness, shall be void, unless there be two other competent witnesses to the same. Two witnesses required.

SEC. 16. But if without a will the witness would be entitled to any portion of the estate, he shall receive such portion to the extent, in value of the amount devised. Witness, when entitled to portion.

SEC. 17. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the Probate Court, as provided in this chapter, or on appeal, in the District or Supreme Court.

SEC. 18. If a devisee die before the testator, his heirs shall inherit the amount so devised, to him, unless from the terms of the will, a contrary intent is manifest. Heirs, how to inherit.

SEC. 19. No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, or altered, otherwise than by some other will in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be torn, burnt, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator, and the fact of such injury or destruction, shall be proved by at least two witnesses. Will, how revoked or altered.

SEC. 20. If after the making of any will, disposing of the whole estate of the testator, such testator shall marry, and have issue of such marriage, born either in his lifetime or after his death, and the wife or the issue of such marriage shall be living at the death of the testator, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will. Same. —

SEC. 21. A will executed by an unmarried woman, shall be deemed revoked by her subsequent marriage. Will of unmarried women how revoked.

SEC. 22. A bond, agreement, or covenant, made for a valuable consideration, by a testator, to convey any property devised in any will previously made, shall not be deemed a revocation of such previous devise, either at law or in equity; but such property shall pass by the devise, subject to the same remedies on such bond, agreement, or covenant, for a specific performance or otherwise, against the devisees, as might be had by law against the heirs of the testator, if the same had descended to them.

SEC. 23. A charge or encumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant, shall not be deemed a revocation of any will relating to the same estate, previously executed; but the devises and legacies therein contained, shall pass and take effect, subject to such charge or encumbrance. Incumbrance.

SEC. 24. A conveyance, settlement, deed, or other act of a testator, by which his estate or interest in property, previously devised by him, shall be altered, but not wholly divested, shall not be deemed a revocation of the devise of such property; but such devise shall pass to the devisee the actual estate or interest Testator, how may devise.

of the testator, which would otherwise descend to his heirs, unless in the instrument by which such alteration is made, the intention is declared, that it shall operate as a revocation of such previous devise.

Condition and contingencies.

SEC. 25. But if the provisions of the instrument by which such alteration is made, are wholly inconsistent with the terms and nature of such previous devise, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition be not performed, or such contingency do not happen.

Property given to descendant.

SEC. 26. When any property shall be given by will, to any descendant of the testator, and the devisee shall die during the lifetime of the testator, leaving a descendant who shall survive the testator, the devise shall not lapse, but the property so given, shall vest in such surviving descendant.

Destroying second will does not revive first.

SEC. 27. If, after the making of any will, the testator shall duly make and execute a second will, the destruction, cancelling or revocation of such second will, shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive his first will ; or unless after such destruction, cancelling, or revocation, he shall duly republish his first will.

Will, how to be deposited.

SEC. 28. Any will in writing, being enclosed in a sealed wrapper, and having endorsed thereon the name of the testator and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the clerk of the probate court in the county where the testator lived at the time ; and the said clerk shall receive and safely keep such will, and give a certificate of the deposit thereof.

Will, how opened.

SEC. 29. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorized by him by an order in writing, duly proved by the oath of a subscribing witness ; and after the death of the testator, and at the first probate court after the notice thereof, it shall be publicly opened by the clerk and be retained by him.

Clerk to notify executors.

SEC. 30. The clerk shall give notice of such will being in his possession, to the executor therein appointed, if there be one, otherwise to the persons interested in the provisions of the will ; or if the jurisdiction of the case belongs to any other court, such will shall be delivered to the executor, or to some other trustworthy person, interested in the provisions of the same, to be presented for probate, in such other court.

Will, to whom delivered.

SEC. 31. Every person other than the clerk having the custody of any will, shall, within thirty days after he has knowledge of the death of the testator, deliver the same into the probate court, which has jurisdiction of the case, or to the person named in the will as executor.

Executor to signify assent or refusal.

SEC. 32. Every person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that his is named executor, if he obtain such knowledge after the death of the testator, present such will to the Probate Court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the clerk ; and shall,

within the period above mentioned, signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

SEC. 33. Every person who shall neglect to perform any of the duties required in the two last preceding sections, without reasonable cause, shall be liable to each and every person interested in such will, in the sum of ten dollars damages for each and every month he shall so neglect, after the thirty days above mentioned, to be recovered in an action on the case with costs. Penalty for neglect.

SEC. 34. If any person, having the custody of any will, after the death of the testator, shall, without reasonable cause, neglect to deliver the same to the Probate Court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county, by warrant issued by such court, and there be kept in close confinement until he shall deliver the will as above directed. Imprisonment for non-delivery of will.

SEC. 35. Any person interested in the estate may have such will proved before the proper court of probate. Persons interested may have will proved.

SEC. 36. On application to such court he shall ascertain by satisfactory evidence, the names and places of residence of the heirs, widow, and next of kin of the testator, or that upon diligent inquiry the same cannot be ascertained. To ascertain names and residence.

SEC. 37. Such court shall also ascertain whether any and which of the persons mentioned in the preceding section are minors, and the names and places of residence of the general guardians, if they have any; and if there shall be no general guardian within this territory, the court shall, by an order to be entered, appoint a special guardian for such minor, to take care of his interest in the premises; and the written consent of every person so appointed special guardian to serve as such, shall be filed with the clerk. The testamentary guardian, named in the will to be proved, shall not for this purpose be deemed a general guardian. Minors and guardians.

SEC. 38. In case any of the persons entitled to notice, or their guardians, reside within fifty miles of the place of hearing, the clerk shall issue a notice, requiring the proper persons; at such time and place as shall be therein mentioned, to appear and attend the probate of the will; the notice shall state who has applied for the proof of the will, and whether it relates exclusively to either real or personal estate, or to both; it shall be directed to the proper persons by name, stating their places of residence. And such notice shall be served as provided in sec. 15 of the chapter entitled, "Of administration with the will annexed." Notice, how given to prove will.

SEC. 39. If it be made satisfactory to appear before such court that any of the persons entitled to notice, as aforesaid, reside more than fifty miles from the place of hearing, or if the place of residence of any such person cannot be ascertained, he shall cause notice to be given by publication, as directed in the section and chapter referred to in the last section. Notice may be given by publication.

SEC. 40. Before proceeding to the proof of any will, the court shall require satisfactory evidence of notice by affidavit of the service of the notice personally, or by publication in the mode Evidence of notice to be made by affidavit.

prescribed by law. If notice has not been given, the hearing shall be adjourned for the purpose of giving it.

Witness, how examined.

SEC. 41. Upon proof being made that the notice has been given as aforesaid, the court shall cause the witness to be examined, and their testimony to be taken down in writing, by the clerk. No will shall be deemed proved until the witnesses to the same, residing in this territory at the time of such proof, of sound mind and competent to testify, shall have been examined pursuant to law, and in all cases the oath of the person who received the will from the testator, if he can be produced, together with the oath of the person presenting the same for probate, stating the circumstances of the execution, delivery and possession thereof, may be required, and before adjudging the will proved and recording it, the court shall be satisfied of its genuineness and validity.

Court may approve and allow.

SEC. 42. If no person shall appear to contest the probate of a will at the time appointed for that purpose, the court may, in its discretion, approve and allow the same, on testimony of one of the subscribing witnesses only; if such witness shall testify that such will was executed in all the particulars, as required in this chapter, and that the testator was of sound mind at the time of the execution thereof.

Witnesses may be examined at their place of residence.

SEC. 43. In case any witness living in the same county with the judge, shall be disabled by age, sickness, or infirmity, from attending the court on the hearing, if it be necessary to obtain the testimony of such witness, the judge shall proceed to the place of residence of such witness and there take his examination in writing, which, being taken down by the clerk, shall have the same effect as if the witness had appeared on notice.

Court may take deposition of witness.

SEC. 44. If such aged, sick, or infirm witness reside in this Territory, and in a different county from the judge, and it be necessary to obtain his testimony on the hearing, and it appearing probable that the attendance of such witness cannot be procured in season for the hearing, the court may adjourn the hearing, and in the meantime the testimony of the witness may be taken in the form of a deposition, following as near as may be the course prescribed for taking depositions to be used before the District Courts.

Will, how allowed, filed and recorded.

SEC. 45. All wills which shall have been duly proved and allowed in any of the United States, or Territories, or in any foreign country or State, according to the laws of such State, Territory, or country, may be allowed, filed and recorded in the Probate Court of any county in which the testator shall have real and personal estate on which such will may operate, in the manner mentioned in the following sections.

Copy of will how proved.

SEC. 46. When a copy of such will, and the probate thereof duly authenticated, shall be produced by the executor or other person interested in such will, to the Probate Court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

Copy, how filed and recorded.

SEC. 47. If on hearing the case, it shall appear to the court that the instrument ought to be allowed in this Territory, as the last will of the deceased, the copy shall be filed and recorded,

and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

SEC. 48. When any will shall be allowed as last above mentioned, the Probate Court shall grant letters, and such letters shall extend to all the estate of the testator in this Territory, and such estate, after payment of the debts, and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue shall be disposed of as in cases of intestate estates in this Territory.

Court may grant letters of administration.

SEC. 49. When any child shall be born after the making of his father's will, and no provision shall be made therein for him, such child shall have the same share in the estate of the testator as if he had died intestate

Provision for child born after making will.

SEC. 50. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child, or the issue of a child omitted in the will, as herein-before mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary, shall be taken from all the devises, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise, or other provision in the will, would thereby be defeated; in which case, such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment may be adopted, in the discretion of the court.

Same.

SEC. 51. All the estate of the testator, real and personal, except what by law may be assigned to the widow and children of the deceased, shall be liable to be disposed of for the payment of his debts, and the expenses of administering his estate, and the Probate Court may make such reasonable allowance as may be judged necessary for the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his personal estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

Debts and expenses how paid.

SEC. 52. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provision of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

Same.

SEC. 53. If the provision made by the will, or the estate appropriated, shall not be sufficient for such purposes, such part of the estate, real and personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Same.

SEC. 54. The estate, real or personal, given by will to any devisees, shall be held liable to the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises, except that specific devises, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary, in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

Specific devises exempted.

Liabilities, how settled.

SEC. 55. When the estate given by any will, shall be liable for the payment of debts and expenses as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child, or of the issue of a child not provided for in the will as herein before provided, the executor shall have a right to retain possession of the same until such liability shall be settled by order of the Probate Court, and until the devisees, so liable, shall [be] accordingly assigned by order of such court; and when the same can properly be done, any devisee may make his claim to such Court, to have such liability settled, and his devise assigned him.

Devisees liable proportionate.

SEC. 56. All the devisees, who shall, with the consent of the executor or otherwise, have possession of the estate given to them by will before such liability shall be settled by the Probate Court, shall hold the same subject to the several liabilities mentioned in the preceding section, and shall be held to contribute according to their respective liabilities to the executor, or to any devisee from whom the estate devised to him may have been taken for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child, or the issue of a child omitted in the will; and the persons who may, as heirs, have received the estate not disposed of by the will as provided in this chapter, shall be liable to contribute, in like manner as the devisees.

When one or more devisees are insolvent.

SEC. 57. If any of the persons liable to contribute according to the provisions of the preceding section, shall be insolvent and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to, and to the extent of, the estate they may have received; and if any of the persons so liable to contribute, shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

Probate Court to settle amount of liability.

SEC. 58. The Probate Court may, by decree for that purpose, settle the amount of the several liabilities as provided in the preceding sections, and decree how much, and in what manner, each person shall contribute, and may issue execution as circumstances may require, and the claimant may also have a remedy, in any proper action or complaint in law or equity.

Attested copy of will to be recorded.

SEC. 59. An attested copy of every will devising lands or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised are situated.

Provision for lost will.

SEC. 60. Whenever any will shall be lost by accident, or fraudulently destroyed, the Probate Court shall have the power to take proof of such loss or destruction, and the execution and validity of the will and to establish the same, as other courts may do in cases of lost deeds.

To be recorded.

SEC. 61. If such lost or destroyed will, be established and approved by the decree of the court, such decree with the evidence upon which it shall be founded shall be recorded by the clerk, and the proper letters shall be issued thereon by the court.

Court may restrain by order.

SEC. 62. Should letters be granted before or during the pendency of every application to prove a lost or destroyed will, the

court shall have power to restrain by order, the doing any act under such letters which would be injurious to heirs or legatees under the lost or destroyed will; and any disobedience of such order shall be a contempt, for which the person may be punished, as in cases of contempt in the District Court.

SEC. 63. No will of any testator who shall die after this chapter shall take effect, shall be proved as a lost or destroyed will, unless it shall be proved to have been in existence, at the death of the testator, or that it was lost or fraudulently destroyed in his lifetime, nor unless its provisions be clearly proved by at least two credible witnesses.

Loss of will,
how proved.

SEC. 64. The provisions of this chapter shall not be construed to impair the validity of the execution of any will made before this chapter shall take effect, or to affect the construction of any such will.

Validity of will
how impaired.

Approved January 26, 1856.

CHAPTER XXXVIII.

LETTERS TESTAMENTARY.

SEC. 1. On the allowance of a will, the Probate Court shall, if not objected to, issue letters to the persons named therein as executors, if they be legally competent, accept the trust, take the oaths, and give the bond required by law.

Issuance of let-
ters to execu-
tors.

SEC. 2. But if any person having an interest in the estate shall, within twenty days from the allowance of the will, file objections in writing to granting letters to the persons named in the will as executors, or any of them, the Court must assign a day for the hearing of such objections, and then dispose of the same and enter its decision upon record, with the reasons therefor.

When objec-
tions may be
filed.

SEC. 3. A person is not competent to be an executor, if at the time the will is approved he shall be—

In capacity of
executors.

1. Incapable in law of making a contract;
2. Under the age of twenty-one years, or a married woman;
3. Who shall have been convicted of an infamous crime; or,
4. Who shall, upon proof, be adjudged incompetent to properly execute the duties of executors by reason of drunkenness, improvidence, want of understanding, or any other good and sufficient cause.

SEC. 4. If any incompetent person be named as sole executor in any will, or if all the persons named therein as executors be incompetent, letters, with the will, annexed shall be issued as provided in the case all the executors refuse to accept; if any one or more be found competent, letters must be issued in accordance with such finding.

Letters with the
will annexed,
when issued.

SEC. 5. Should the disability of being a married woman, or of being under age, be removed before the full execution of the will, such person shall be entitled, on application, to supplementary letters, to be issued in the same manner as the original letters, and shall thereupon join in the execution of the will with those previously appointed.

Supplementary
letters.

Refused to accept.

SEC. 6. If a person named [as] executor in any will shall refuse to accept the trust, or shall, for the space of twenty days after the probate and allowance of the same, neglect to give bond as required by law; the Probate Court may grant letters to the other executors, if there be any, who are capable and willing to accept the trust, and if there be no such other executor who will give bond, the Court may commit administration of the estate, with the will annexed, to such person as would have been entitled to the same if the testator had died intestate.

Bond.

SEC. 7. Every executor, before he shall enter upon the execution of his trust, and before letters shall issue, shall give bond to the "judge of probate, and his successor in office," without naming the judge, in such reasonable sum as the Court may direct, with such sureties as the Court shall approve, and with conditions as follows :

Inventory.

1st. To make and return to the Probate Court within three months a true and perfect inventory of all goods, chattels, rights, credits, and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him.

To administer according to law.

2d. To administer, according to law and to the will of the testator, all his goods, chattels, rights, credits, and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies, and charges chargeable on the same, or such dividends thereon as shall be ordered and decreed by the Probate Court.

To render account.

3d. To render a true and just account of his administration to the Probate Court within one year, and at any other time when required by such Court.

To perform orders &c., of Court.

4th. To perform all orders and decrees of the Probate Court by the executor to be performed in the premises.

Bond of residuary legatee.

SEC. 8. If, however, the executor shall be residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond in such sum, and with such sureties, as the Court may direct, with a condition only to pay all the debts and legacies of the testator ; and in such case he shall not be required to return an inventory.

Not to act unless qualified.

SEC. 9. No person named as executor in any will, who shall refuse to accept the trust, or shall neglect to give bond, or to take the oath as prescribed in this chapter, for twenty days after the probate of such will, shall intermeddle or act as executor.

Oath.

SEC. 10. Before letters shall issue to any executor, he shall take and subscribe an oath before some officer legally authorized to administer oaths, that he will faithfully and honestly discharge the duties of such executor, which oath shall be filed in the office of the clerk.

No authority to act, unless qualified.

SEC. 11. Every person named in a will as executor, and not named as such in the letter, shall be deemed to be superseded thereby, and shall have no power or authority whatever until he shall have accepted the trust, taken the oath, given the bond, and obtained his letters.

SEC. 12 Every person so named in the will, who shall not,

within twenty days after being cited to appear and take upon himself the trust, or having voluntarily appeared in Court for the purpose, shall not, within twenty days thereafter accept the trust or take the oath, or give the bond required by law, shall be deemed to have refused to act as executor.

Neglect to appear or qualify.

SEC. 13. No executor named in a will shall, before letters testamentary are issued, have any power to dispose of any part of the estate of the testator, except to pay funeral charges, nor to interfere with such estate in any manner, further than is necessary for its preservation.

Powers of executor before letters are issued.

SEC. 14. When all the executors appointed in any will shall not be authorized according to the provisions of this chapter, to act as such, such as are authorized shall have the same authority to perform every act, and discharge every trust, required and allowed by the will; and their acts shall be as valid and effectual for every purpose as if all were authorized, and should act together.

In case some of the executors are not authorized to act.

SEC. 15. The executor of an executor shall not, as such, have any authority to administer the estate of the first testator.

Executor of an executor.

SEC. 16. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate bond from each of them with sureties, or a joint bond from all of them with sureties.

Bond of two or more executors.

Approved January 26.

CHAPTER XXXIX.

OF ADMINISTRATION WITH THE WILL ANNEXED, AND IN CASES OF INTESTACY.

SEC. 1. In the cases following, letters of administration with the will annexed shall issue :

How letters of administration may issue.

1st—When there shall be no person named in the will as executor :

2nd—When all the persons named in the will as executors, refuse to accept, or shall be decided to be incompetent ;

3d—When all the executors or administrators with the will annexed, or sole executor or administrator with the will annexed, shall die or be removed by the court, before having fully settled up the estate :

4th—When any executor or administrator with the will annexed, shall become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, or shall resign his trust, being allowed to do so by the court, before having fully settled up the estate :

5th—When a single woman shall be named sole executrix in a will, and shall marry after letters have issued to her, and before having fully settled up the estate.

SEC. 2. No person shall be appointed administrator with the will annexed, unless he be competent to act as executor upon the estate, nor unless he will take the oath and give the bond required by law.

Competency.

Rights and powers.

SEC. 3. In all cases when letters of administration with the will annexed shall be granted, the will of the deceased shall be observed and performed, and administrators shall have the rights and powers, and be subject to the same duties, and their act shall be as valid and effectual, for every purpose, as if they had been named executors in such will.

Letters of administration.

SEC. 4. Letters of administration on the estate of persons dying intestate, shall be issued by the court of probate when the intestate was :

1st.—At, or immediately previously to his death, an inhabitant of the county of the Judge : or

2nd—Not an inhabitant of the Territory, but shall die in the county of the Judge, having assets therein : or

3d—Not an inhabitant of the Territory, and shall die out of the same, leaving assets in the county of the Judge : or

4th—Not an inhabitant of the Territory, and shall die out of the same, not leaving assets therein, but assets of such intestate shall thereafter come into, or be found in the county of such Judge.

Non residents.

SEC. 5. Whenever an intestate, not being an inhabitant of this Territory, shall die out of the Territory, leaving assets in several counties, or assets of such intestate, shall after his death come into several counties, the Court of Probate of any county in which such assets shall be, shall have power to grant letters of administration on the estate of such intestate, but the court who shall first grant letters of administration on such estate, shall be deemed thereby to have acquired sole and exclusive jurisdiction over such estate, and shall be vested with all the powers incidental thereto.

Powers of administrators.

SEC. 6. The persons appointed administrators by the court, who shall have first granted letters of administration in the cases specified in the last section, shall have exclusive authority as such and shall be entitled to demand and recover from every person subsequently appointed administrator of the same estate, the assets of the deceased in his hands, but all acts in good faith, of such subsequent administrator done before notice of such previous letters, shall be valid : and all suits commenced by him, may be continued by, and in the name of, the first administrator.

Proof of death.

SEC. 7. Before any letters of administration shall be granted on the estate of any person who shall have died intestate, the fact of such person dying intestate, shall be proved to the satisfaction of the court, which shall examine the persons applying for such letters on oath, touching the time, place, and manner of the death, and whether or not, the party dying left any will, and any assets within the jurisdiction of the court, and the court may also in like manner examine any other person, and may compel such person to attend as a witness for that purpose.

Administration how to issue.

SEC. 8. Administration in cases of intestacy shall issue in the following order ; first to the widow of the intestate ; second to the children ; third to the father ; fourth to the brothers ; fifth to the sisters ; sixth to the grand children ; seventh to any other of the next of kin, who would be entitled to a share in the distribution. If any of the persons be minors, letters shall be granted to their guardians, if none of the said relations or guardians will accept of

letters, to one or more of the principal creditors, and if no creditor apply, then to some other suitable person.

SEC. 9. No person shall receive letters of administration unless he be competent, to receive letters testamentary had their been a will, and he been named therein as executor : but when a married woman is entitled to administration, the letters may be granted to her husband, in her right and behalf. Competency.

SEC. 10. When there shall be several persons of the same degree of kindred to the intestate, entitled to administration, they shall be preferred in the following order : first, males to females : second, relatives to the whole blood, to those of the half blood : third, unmarried woman to such as are married, and when there are several persons equally entitled to administration, the court may, in its discretion, grant letters, to one or more of such persons. Degree of kindred.

SEC. 11. A husband, as such, if otherwise competent, according to law, shall be solely entitled to administration on the estate of his wife; if he will accept the same, and shall give bond as other persons, but shall be liable as administrator, for the debts of his wife, only to the extent of the assets received by him. If he shall not take out letters of administration on her estate, he shall be presumed to have assets in his hands, sufficient to satisfy her debts and shall be liable therefor ; and if he shall die, leaving any assets of his wife unadministered, they shall pass to his executor or administrator as part of his personal estate, but shall be liable for her debts to her creditors, in preference to the creditors of her husband. Husbands liability if administrator.

SEC. 12. If letters of administration on the estate of a married woman shall be granted to any other person than her husband, by reason of his neglect, refusal, or incompetency to take the same, such administrator shall account for and pay over the assets remaining in his hands, after the payment of debts, to such husband, or his personal representatives. Administrator how to account

SEC. 13. Administration may be granted to one or more competent persons, although not entitled to the same, with the consent of the person entitled, to be joined with such person : which consent shall be in writing, and be filed in the office of the clerk. Administration may be granted to two persons.

SEC. 14. When any person shall apply for administration, either with the will annexed, or in case of intestacy, and there shall be any other person having prior right to such administration, the applicant shall produce, prove, and file with the judge, a written renunciation of the persons having such prior right. If he fail to do so, before any such letters shall be granted, a citation shall be issued by the clerk, to all persons having such prior right, to show cause, at a day therein specified, why administration shall not be granted to such applicant. Prior right.

SEC. 15. If any person to whom such citation shall be directed, shall reside within fifty miles of the place of hearing, such citation shall be served personally, or by leaving a copy at the residence of such person, at least six days before the return-day thereof ; if any such person reside more than fifty miles from such place of hearing, or his residence cannot be ascertained, such citation shall be served by being published for six weeks ; and when said pub- Citation, how served.

lication takes place, no further publication of the application for letters need be had.

Publication.

SEC. 16. When no publication has been made, as in the preceding section, and application shall be made to the judge for the appointment of an administrator on an intestate estate, or for letters of administration with the will annexed, he shall cause notice of the same, and of the time and place of the hearing thereof, and of the name of the applicant, to be published for six successive weeks.

Oath and bond.

SEC. 17. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall take and subscribe the same oath, as an executor is required to take and subscribe, and shall give a bond to the judge of probate and his successors in office, without naming him, with such sureties as he shall approve, with the same conditions as are required in the case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

Penalty for embezzlement.

SEC. 18. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects, of any deceased person, such person shall stand chargeable and liable to the action of the executor or administrator of such estate, for double the value of the property so embezzled, or alienated, to be recovered for the benefit of such estate, in an action of trover and conversion or other proper action grounded on this section.

Removal.

SEC. 19. When an administrator shall be removed, or his authority shall be extinguished, the remaining administrator, if any, may execute the trust; if there shall be no other, the court shall commit administration of the estate, not already administered, to some suitable person, as in case of the death of a sole administrator.

In case of appointment of administrator.

SEC. 20. An administrator appointed in the place of any former executor or administrator, for the purpose of administering the estate not already administered, on taking the oath and giving the bond as required by law, shall have the same powers, and shall proceed in settling the estate, in the same manner as the former executor or administrator shall have had or done; and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution on any judgment recovered in the name of the former executor or administrator, and shall have the exclusive control thereof, and may on payment discharge the same.

Revocation.

SEC. 21. If, after the granting of letters of administration by any Probate Court, on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved, and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the court, and render an account of his administration within such time as the court shall direct.

Powers of executor to sue and collect.

SEC. 22. The executor of the will shall, in such case, be entitled to determine, sue for, collect, and dispose of, according to law, all the goods, chattels, rights, and credits of the deceased,

remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator, before the revocation of his letters of administration, and may cause execution to issue thereon, and shall have the exclusive control thereof, and may, on payment, discharge the same.

SEC. 23. When two or more persons shall be appointed administrators on any estate, the Judge may take a separate bond from each, with sureties, or a joint bond, with sureties, from all.

Bond, how taken.

Approved, January 26th, 1856.

CHAPTER XL.

GENERAL PROVISIONS AS TO LETTERS TESTAMENTARY AND OF ADMINISTRATION.

SEC. 1. If from any cause there shall be necessary delay in issuing general letters testamentary or of administration, the court of probate may in its discretion issue special letters, authorizing the collection and preservation of the debts and property of the deceased; from which there shall be no appeal.

When special letters may issue.

SEC. 2. Every special administrator so appointed shall have authority to collect the personal estate and debts of the deceased, and to secure the same at such reasonable expense as such court shall allow, and for those purposes he may maintain suits as administrator. Under the direction of such court he may sell such of the goods of the deceased as shall be deemed necessary for the preservation and benefit of the estate, after the same shall have been appraised.

Powers of special administrator.

SEC. 3. Such special administrator shall not be liable to an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

Not liable.

SEC. 4. Upon general letters being issued, the powers of such special administrator shall cease; but any suit brought by him may be continued by the executor or administrator in the name of such special administrator, which he shall not have power to discontinue or release. And such special administrator shall, on demand, deliver to the executor or administrator, all the property and money of the deceased in his hands, and shall render an account, on oath, to the court of probate of all his proceedings, upon being cited for that purpose, or without such citation. Such delivery and account may be enforced by an order of such court, and by attachment, as in other cases of administrators' accounts.

When his power shall cease.

Delivery and account.

SEC. 5. Every such special administrator shall, before entering upon the duties of his trust, take and subscribe to the same oath which the general administrator is bound by law to take and subscribe to, and shall give a bond to the judge of probate as he shall direct, with a condition that he will, within such time as the court shall direct, not exceeding thirty days, make and return a true inventory of all the goods, chattels, rights, credits and effects of the deceased which shall come to his possession or knowledge, and that he will truly account for all the goods, chattels, debts

Bond and oath.

and effects of the deceased which shall be received by him, whenever required by the Probate Court, and will deliver the same to the person who shall afterward be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same: and such inventory shall, by said special administrator, be made and returned according to the requirements of said bond and the provisions of this chapter.

Powers of foreign executors.

SEC. 6. If any person not an inhabitant of this Territory shall die, leaving property therein, and no application for letters be made by a relative legally competent and entitled thereto, and it shall appear that letters have been granted by competent authority in any other State, Territory or country, upon the same estate, the person so appointed on producing such letters, shall be entitled to letters in preference to any other person on complying with the requirements of the law.

Insolvency &c. of executors.

SEC. 7. The court, at least once in every year, shall examine the bonds of all executors and administrators whose final accounts are not settled, and if it shall therefore have doubts of the solvency or sufficiency of the obligors or sureties thereon; or if any person interested in any estate, shall make known to the court the fact of the insolvency or insufficiency of any such obligor or sureties, or that they are becoming insolvent, or have removed or are about to remove from the Territory, the court shall direct the clerk to issue a citation to such executor or administrator, requiring him to appear before such court at a time and place to be therein specified, to show cause why he should not give further sureties, or be superseded in the administration; which citation shall be served personally on the executor or administrator, at least six days before the return-day thereof; or if he shall have absconded, or cannot be found, it may be served by leaving a copy at his last place of residence, or by publication, as the court shall direct.

Citation.

Service.

Return and hearing.

SEC. 8. On the return of the citation, or at such other time as the court shall appoint, it shall proceed to hear the proofs and allegations of the parties; and if it shall satisfactorily appear that the sureties are, for any cause, insufficient, the court shall make an order requiring such executor or administrator to give further sureties in the usual form, within a reasonable time, not exceeding five days.

Revocation of letters testamentary.

SEC. 9. If such executor or administrator neglect to give further sureties to the satisfaction of the court, within the time prescribed, the court shall by order revoke the letters of administration issued to such executor or administrator, whose authority and rights as an executor or administrator, shall thereupon cease.

Application of sureties for relief.

SEC. 10. When either or all of the sureties of any executor or administrator shall desire to be released from responsibility on account of the future acts or defaults of such administrator, they may make application to the court which granted letters of administration for relief.

Citation.

SEC. 11. The court shall thereupon direct the clerk to issue a citation to such administrator, requiring him to appear before such court at a time and place to be therein specified, and give new sureties in the usual form, for the faithful discharge of his

duties ; which citation shall be served in the manner prescribed by the seventh section of this chapter. N. w sureties.

SEC. 12. If such administrator shall give new sureties to the satisfaction of the court, it may thereupon make an order that the surety or sureties who applied for relief in the premises, shall not be liable on their bond for any subsequent act, default, or misconduct of such administrator. Relief of sureties.

SEC. 13. If such executor or administrator neglect to give new entries to the satisfaction of the court on the return of the citation, or within such reasonable time as the court shall allow, not exceeding five days, the court shall by order revoke the letters issued by such executor or administrator, whose authority and rights as such shall thereupon cease. Revocation of letters from neglect.

SEC. 14. When letters shall issue to more than one person, and the court shall revoke the same in pursuance of law as to a part of the executors or administrators only, those whose letters have not been revoked shall have the entire administration of the estate subsequent to the revocation ; and any suit brought previous thereto may be proceeded in in the same manner as if no revocation had occurred. Revocation in case of two or more executors.

SEC. 15. Whenever it shall appear to the court that letters have been granted on or by reason of false representations, made by the person to whom the same were granted ; and also, whenever it shall appear that an executor or administrator has become incompetent to act as such, by reason of drunkenness, improvidence or want of understanding, the court shall have power to revoke such letters. Revocation by reason of incompetency &c.

SEC. 16. Whenever it shall appear that the penalty of the bond taken from an executor or administrator is inadequate in amount, the court shall have power to make an order requiring him to give additional security for the faithful performance of his duty as such executor or administrator, and in case of non-compliance with such order the court may revoke the letters granted to him. Additional security.

SEC. 17. All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust. Validity of acts prior to revocation.

SEC. 18. No Judge of Probate shall act in any case where,— Judge of probate when incapacitated.

1. He is next kin to the deceased ; or where,
2. He is legatee or devisee under the will ; or where,
3. He is named executor or trustee in the will, or is one of the subscribing witnesses thereto ; or where,
4. He is so related to any party in interest in any case before him, by affinity or consanguinity, or has such an interest therein as would exclude him from acting as a juror in the matter ; or where,
5. He has acted as attorney or counsel in any cause or matter before him.

SEC. 19. When any Judge of Probate shall be so precluded from acting, or is absent, or unable from any cause to act in any matter before him, the clerk of the county, if not incompetent from Clerk to act as Judge.

like causes, shall be vested with all the powers and authority of the Judge in relation to such matter, and shall hold the court and act thereon in place of the judge; and when the office of Judge of Probate shall become vacant by death, removal or resignation, the duties of the judge during such vacancy, shall be performed by such clerk, and in case of the disability of the clerk, the district attorney of the district in which the estate lies, if not incompetent, shall possess the same powers and perform the same duties as are herein conferred upon the clerk, and when there shall be no one capable of acting, the district judge of the district shall appoint some person to act as Judge of Probate in the premises.

District Attorney.

Seal.

SEC. 20. Whenever the clerk or district attorney or other person shall act in the place of the judge, and it shall be necessary to use a seal, he is authorized and required to use the seal of the Court of Probate.

Jurisdiction of court in new counties.

SEC. 21. In case of the formation and organization of a new county, the Court of Probate thereof shall have jurisdiction of all cases where the deceased at the time of his death resided, and had assets within the limits of said new county. But if in any such case any estate in such new county is in process of administration at such formation and organization, the court which first had jurisdiction, shall retain it until the estate be settled.

Form of letters.

SEC. 22. All letters to be issued by any Court of Probate, shall be issued in the name of the officer granting the same, and shall be signed by him, and when issued by any officer other than the Judge of Probate shall be signed by him as "acting Judge of Probate," and sealed with the seal of the Court of Probate.

Such letters, evidence of authority.

SEC. 23. Such letters so granted, signed and sealed, shall be conclusive evidence of the authority of the persons to whom the same shall be issued, until the same shall be reversed on appeal or revoked according to law.

Records to be kept by clerk.

SEC. 24. The clerk shall cause to be recorded in the proper books in his office, all wills presented for probate, all letters issued, both general and special, the testimony taken in relation to the allowance of any will, or in any controversy in relation to issuing letters or to their revocation; and the records and the transcripts thereof, certified by the clerk, under the seal of the Court of Probate, shall be evidence in all courts in like manner and with like effect as if the originals were produced and proved.

Neglect of non-resident executor to render accounts.

SEC. 25. When any executor or administrator shall reside out of the Territory, and shall neglect after due notice to render his account and settle the estate according to law, or to perform any decree or order of the Court of Probate, or shall abscond, or become insane, or otherwise incapable of discharging his trust, or be evidently unsuitable therefor, the said court after notice to such executor or administrator, and all others interested, may revoke his letters; and every executor or administrator may resign his trust, when it shall appear to the court proper to allow him to do so.

Powers of an executrix extinguished by marriage.

SEC. 26. When an unmarried woman who is executrix or administratrix, alone, or jointly with another, shall marry before settling up the estate, her powers as such executrix or administratrix, shall be thereby extinguished, and the husband of such executrix shall not be executor in her right.

Approved January 26th, 1856.

CHAPTER XLI.

OF TAKING THE INVENTORY AND COLLECTION OF THE EFFECTS
OF THE DECEASED.

SEC. 1. The executor or administrator shall within three months from the time of his appointment, make, and return to the Probate Court, a true inventory of all the estate, real and personal of the deceased, which has come to his knowledge. But an executor, who is a residuary legatee, and shall have given the bond by law required, need not return such inventory.

Return of inventory.

SEC. 2. Each parcel of real, and article and item of personal property must be entered on the inventory by itself, so as to leave room for the price to be fixed by the appraisers.

Mode of taking inventory.

SEC. 3. The inventory shall contain a particular statement of all bonds, mortgages, notes, and all other securities, for the payment of money or other things belonging to the deceased, which are known to such executor or administrator; specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, can be collected in each security.

Form of inventory.

SEC. 4. The inventory shall also contain a statement of all other debts and accounts belonging to the deceased, which are known to such executor or administrator, specifying the name of the debtor, the date, the balance or thing due, and the value, or sum which can be collected thereon.

What it shall contain.

SEC. 5. On the application of the executor or administrator the court must appoint two or more disinterested appraisers to appraise the property of the deceased, who, before proceeding to the execution of their duty, shall take and subscribe on oath, to be indorsed upon the inventory, before some officer authorised to administer oaths, that they will truly, honestly, and impartially, appraise the property shown them, according to the best of their knowledge and ability.

Appraisers.

SEC. 6. The appraisers shall then appraise the property shown them, and shall set down in the inventory, and opposite to the articles respectively, the true value of each parcel or article thereof, in dollars and cents, distinctly in words, and carried out in figures into a column, so that the aggregate can be easily cast up.

Duties of appraisers.

SEC. 7. If any part of the property of the deceased, shall be in any other county in the Territory, appraisers must be appointed, either by the court having jurisdiction of the case, or by any disinterested Justice of the Peace of such other county. When appraisers shall be appointed by a Justice of the Peace, he shall issue an order to them in substance as follows :

Appraisers, when property is in another county.

County of _____ ss.

To _____ of _____, in said county : You are hereby appointed to appraise on oath, the estate and effects of _____ late of _____ deceased, which may be in said county ; and when you have performed that service, you are

required to deliver this order, and your doings in pursuance thereof, to _____ executor (or administrator, as the case may be,) of said deceased.

Given under my hand, this _____ day of _____, in the year _____.

Justice of the Peace.

Oath of appraisers.

Proceedings on the return of the inventory.

Articles exempt.

Allowance for support of widow and children.

In case personal property is insufficient.

Further allowance.

SEC. 8. Before appraising the property, the appraisers must be sworn, as provided in section 5, of this chapter; and the oath must be subscribed and indorsed upon the inventory; and in all cases when the appraisal shall be completed, the appraisers must certify the same, and deliver it to the executor or administrator, who shall return it to the court, keeping a copy thereof, for his own guidance. On the return of the inventory, the court shall inquire into the number and condition of the family of the deceased; if he left a widow or minor child, or children, the court shall designate and assign to the widow, if there be one; and if not, to said children, all the articles of personal property thereon, which were exempt from execution, immediately preceding the death of the deceased, which articles, except the wearing apparel of the deceased, shall remain in the possession of the widow, if there be one, during the time she shall live with, and provide for, such minor child or children. When she shall cease to so do, she shall be allowed to retain as her own, her wearing apparel, her ornaments and bed, bedstead, and bedding, for the same, and the other articles so exempted, and not consumed, shall then belong to such minor child or children. If there be a widow and no minor child or children, then the said articles shall belong to such widow, and such articles so assigned, shall be by the clerk copied off from the inventory, certified by him, and the copy delivered to the widow, or guardian of the children, and such articles shall not be assets in the hands of the executor or administrator.

SEC. 9. The court shall also set off and allow to the widow, and children under the age of fifteen years, if any there be; or, if there be no widow, then to such children sufficient provisions or other property, to support them for twelve months from the death of the deceased; and if the widow or such children, have since the death of the deceased, and previous to such allowance, consumed for their support any portion of the estate, the court shall take the same into consideration, in determining the amount of allowance.

SEC. 10. When there is not sufficient personal property, or property of a suitable kind, to set off to the widow or children, as provided in the preceding section, the court shall certify what sum, or further sum in money is necessary for the support of such widow or children.

SEC. 11. The widow and children of the deceased shall also be allowed by the court, such further sum as it may so certify to be proper, out of the personal estate, or such other articles as she may select in lieu thereof, not exceeding in the whole, two hundred dollars, which is to be in addition to what is mentioned

in section eight, of this chapter, and after paying all legacies, claims, debts, allowances, and expenses of administration, the residue of the personal property shall be disposed of to the same persons, as if it were real estate; the widow if there be one, taking one-third thereof.

SEC. 12. When there is not sufficient provisions of the deceased for the support of the family for twelve months, the deficit shall be made up from the personal property, and if that be deficient, the balance is to be supplied from the income of the real estate; if that be deficient, then, from the sale of the real estate itself.

When the personal property is insufficient.

SEC. 13. Upon returning said inventory, the executor or administrator shall take and subscribe an oath before some officer authorized by law to administer oaths, stating that such inventory is in all respects just and true; that it contains a true statement of all the real and personal estate of the deceased, which has come to the knowledge of such executor or administrator, and particularly of all money, bank bills, or other circulating medium, belonging to the deceased, and of all just claims of the deceased against such executor or administrator, or other persons, according to the best of his knowledge; such oath shall be indorsed upon, or annexed to the inventory.

Inventory to be sworn to

SEC. 14. The naming of any person, executor in any will, shall not operate as a discharge, or bequest, of any just claim which the testator had against such executor, but such claim shall be included among the credits and effects of the deceased, in the inventory, and such executor shall be liable for the same, as for so much money in his hands, at the time such debt or demand becomes due; and he shall apply and distribute the same in the payment of debts and legacies, and among the next of kin, as part of the personal estate of the deceased.

Executor as such, not discharged from liability to testator.

SEC. 15. The discharge or bequest in a will, of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid as against the creditors of the deceased; but shall be construed only as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory of the credits and effects of the deceased, and shall, if necessary, be applied in the payment of his debts; and if not necessary for that purpose, shall be paid in the same manner and proportion as other specific legacies.

Discharge of debt against an executor by testator, not valid against creditors.

SEC. 16. If any executor or administrator shall neglect or refuse to return such inventory within the time aforesaid, or within such further time, not exceeding four months, as the court shall, for reasonable cause, allow; the court shall direct the clerk to issue a summons, requiring such executor or administrator, at a short day, therein to be appointed, to appear before such court and return an inventory, according to law, or show cause why an attachment should not be issued against him.

In case executor neglects to return the inventory.

SEC. 17. If, after personal service of such summons, such executor or administrator shall not, by the day appointed, return such inventory on oath, or obtain further time to return the same, the court shall issue an attachment against him, and commit him to the common jail of the county, there to remain until he shall return such inventory.

Proceedings after service of summons.

A citation to be published in case of a non-resident.

SEC. 18. If the executor or administrator be a non-resident of the territory, and personal service therein cannot be made, a citation to appear and return such inventory, shall be published for six weeks, and a copy of the newspaper containing the citation, shall be, by the clerk, sent by mail to said executor or administrator, if his place of residence be known to the Judge.

Revocation of letters and proceedings there-after.

SEC. 19. If, after such publication and proof thereof, or if such summons cannot be personally served, by reason of such executor or administrator's absconding or concealing himself, or if, after having been committed to prison, such executor or administrator shall neglect, for thirty days, to make and return such inventory, the court may thereupon direct the clerk to issue under his seal of office, a revocation of the letters testamentary, or letters of administration before granted to such executor or administrator, reciting therein the cause of such revocation, and shall issue letters of administration, of the goods, chattels, and effects of the deceased, unadministered to the person entitled thereto (other than such executor or administrator) in the same manner as original letters of administration, or letters testamentary are issued.

Authority of such subsequent letters.

SEC. 20. Such letters of administration or letters testamentary shall supercede all former letters, and shall deprive the former executor or administrator of all power, authority, and control over the personal estate of the deceased; and shall entitle the person appointed by such letters, to take, demand, and receive the goods and effects of the deceased, wherever the same may be found.

Action on bond.

SEC. 21. In every such case of revocation, and whenever directed, by the court, the bond given by such former executor or administrator shall be prosecuted, and a recovery shall be had thereon to the full extent of any injury sustained by the estate of the deceased, by the acts or omissions of such executor or administrator, and to the full value of all the property of the deceased received, and not duly administered by such executor or administrator, and the moneys collected thereon, shall be deemed assets in the hands of the person, to whom such subsequent letters, shall have been issued.

In case of delivery of the property.

SEC. 22. Every executor or administrator committed to prison, as aforesaid, may be discharged by the court, or a justice of the Supreme Court, on his delivery upon oath all the property of the deceased under his control, to such person as shall be authorized by the Court of Probate to receive the same.

Neglect of one or more of the executors to return an inventory.

SEC. 23.* Any one or more of the executors or administrators, named in any letters, on the neglect of the others, may return an inventory, and those so neglecting, shall not thereafter interfere with the administration, or have any power over the personal estate of the deceased, but the executor or administrator so returning an inventory, shall have the whole administration, until the delinquent return and verify an inventory agreeable to law.

Appraisement of property not mentioned in inventory.

SEC. 24. Whenever property of any kind not mentioned in any inventory that shall have been made, shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised, in manner aforesaid, and an inventory thereof to be returned, within two months after the dis-

covery thereof; and the making of such inventory and return, may be enforced in the same manner, as in the case of the first inventory.

SEC. 25. The personal estate of the deceased which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the allowances to the widow and family, and the expenses of administration, the whole of his real estate (except the widow's dower,) or so much thereof as may be necessary, may be sold for that purpose by the executor or administrator, after obtaining^a license therefor in the manner provided by law.

In case the personal property is insufficient to pay the debts.

SEC. 26. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rent, issues, and profits of the real estate, until the estate shall have been settled, or until delivered over by order of the Probate Court, to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings, and fences thereon, which are under his control.

Right of possession of decedent's property.

SEC. 27. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the court, on oath, that any person is suspected to have concealed, embezzled, conveyed away, or disposed of any money, goods, or chattels, bond, bill, note, mortgage, deed, contract, or other writing of the deceased, or that such person has in his possession or knowledge, any deeds, conveyances, bills, notes, bonds, contracts, or other writings, which contain evidence of, or tend to disclose the right, title, interest, or claim of the deceased, to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said court may cite such suspected person, to appear before it, and may examine him on oath, upon the matter of such complaint.

Property embezzled.

Examination.

SEC. 28. If the person so cited shall refuse to appear and submit to such examination, or to answer such interrogations as may be put to him, touching the matter of such complaint, the court may by warrant for that purpose, commit him to the common jail of the county, there to remain in close custody, until he shall submit to the order of the court; and all such interrogations and answers shall be in writing, and shall be signed by the party examined, and filed in the Probate Court.

Refusal to appear.

Commitment.

SEC. 29. The court, upon complaint on oath, of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator, with any part of the estate of the deceased person, to appear before such court; and may require such person to render a full account on oath, of any money, goods, chattels, bonds, notes, accounts, or other papers belonging to such estate, which shall have come to his possession, in trust, for such executor or administrator, and of his proceedings thereon; and if the person so cited, shall refuse to appear and render such account, the court may proceed against him, as provided in the preceding section.

Rendering certified account.

Power to compound with debtor.

SEC. 30. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the court, may compound with such debtor, and give him a discharge, upon receiving a fair and just dividend of his effects. But nothing herein contained, shall prevent any party interested in the final settlement of said estate from showing on the final settlement of the accounts of said executor or administrator, that such debt or claim was fraudulently or negligently compromised or compounded.

Mortgages not foreclosed are personal assets.

SEC. 31. When any mortgagee of real estate, or any assignee of such mortgage shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises, conveyed by such mortgage, and the debt secured thereby, shall be considered as personal assets in the hands of the executor or administrator; and he may foreclose the same, and have any other remedy for the collection of such debt, which the deceased could have had if living; or may continue any proceedings commenced by the deceased for that purpose.

Redemption.

SEC. 32. In case of the redemption of any such mortgage, or the sale of the mortgaged premises, by virtue of a power of sale contained therein, or otherwise, the money paid thereon, shall be received by the executor or administrator, and he shall thereupon give all necessary release and receipts; and if, upon a sale of the mortgaged premises the same shall be bid in by the executor or administrator for such debt, he shall be seized of the same in trust, for the same persons, whether creditors, next of kin or others, who would have been entitled to the money, if the premises had been redeemed or purchased at such sale by some other person.

Sale for payment of debts.

SEC. 33. Any real estate so held by an executor or administrator, or which may be purchased by him, as such, upon a sale on execution for the recovery of a debt due the estate, may be sold for the payment of debts or legacies, and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the Probate Court, in the manner provided by law.

Partition and distribution.

SEC. 34. If any land so held by an executor or administrator, as mentioned in the preceding section, shall not be sold by him as therein provided, it shall be assigned and distributed to the same person, and in the same proportion, as if it had been part of the personal estate of the deceased; and if, upon such distribution the estate shall come to two or more persons, partition thereof may be made between them, in like manner as if it were real estate, which the deceased held in his lifetime.

Fraudulent conveyances by testator.

SEC. 35. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall, in his lifetime, have conveyed any real estate, or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or shall have so conveyed such estate, that by law the deeds or conveyances are void, as against creditors, the executor or administrator may, and it shall be his duty, to commence and prosecute to final judgment, any proper action of suit at law or in chancery, for the re-

covery of the same, and may recover for the benefit of the creditors, all such real estate so fraudulently conveyed; and may also for the benefit of the creditors, sue and recover for all goods, chattels, rights or credits which have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 36. No executor or administrator shall be bound to sue for real estate as mentioned in the preceding section, for the benefit of the creditors, unless an application of creditors of the deceased, nor unless the creditors making the application, shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the Probate Court shall judge just and equitable.

Suit brought only on application of creditors.

SEC. 37. All real estate so recovered, as provided in the thirty-fifth section of this chapter, shall be sold for the payment of debts in the same manner, as if the deceased had died seized thereof, upon obtaining a license therefor from the Probate Court; and the proceeds of all goods, chattels, rights and credits recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

License to sell.

Approved January 26, 1856.

CHAPTER XLII.

PAYMENT OF DEBTS AND LEGACIES.

SEC. 1. After the court has made an assignment to the widow and children, or either of them as mentioned in sections 8, 9, 10 and 11, of chapter entitled "of taking the inventory" &c., if the whole estate shall not exceed one hundred and fifty dollars, the court shall assign the same to the widow, and if there be no widow, to the children for their support, and such assignment shall be a full and final administration and bar to all claims against the estate: and if any portion thereof be real estate, the executor or administrator shall by the court be directed to convey, and shall convey the same, by deed to the widow or children, and such conveyance shall have the effect to vest in the grantee, the same interest in the premises which the deceased had therein at the time of his death.

Assignment to widow.

SEC. 2. In all other cases, after the return of the inventory, the court on being satisfied of the existence of claims against the estate, except where the residuary legatee shall give the bond required by law for the payment of the debts, shall by order, appoint a time for the hearing said claims, and shall give twelve weeks' notice thereof by publication.

Time of hearing claims.

Notice.

SEC. 3. All claims against an estate shall, before the same can be filed, be verified by the affidavit of the claimant, or in his absence from the Territory, by his agent, or if dead, by his personal representative, stating that according to his best knowledge, re-

Affidavit of claimant.

Form of affidavit in case of set-off.

collection and belief, the demand is just, and has never, been paid, and that there is no just set-off or discount against the same.

SEC. 4. If any part of the demand has been paid, or there be any just set-off or discount against the same, the affidavit shall state the amount of the payment, when the payment was made, and when the set-off or discount was due, to the best of the affidavit's knowledge, recollection and belief. The verification as above shall not be held to dispense with other proof as heretofore required by law.

When claims must be filed.

SEC. 5. The time appointed as in section 2, must not be over eighteen, nor less than six months from the date of the order of appointment, and claims may be filed with the clerk of the Probate Court at any time before the hearing, and all creditors whose claims shall not be filed before the day set for hearing, will be forever barred from recovering such claim and from setting off the same in any action whatever.

Extension of time.

SEC. 6. The court may extend the time of filing and hearing claims as circumstances may require, but not beyond two years from the date of the first order of appointment.

Time of hearing.

SEC. 7. If within six months of the time last appointed, any creditor who has failed to file his claim, shall present to the court and apply for a hearing on the same, the court shall fix a time for hearing the application and shall notify the executor or administrator thereof, and if on hearing the reasons for such application, the court shall deem them good and sufficient, it shall allow the claim to be filed and shall proceed as soon as may be to hear and decide upon it.

Duties of executor at hearing.

SEC. 8. The executor or administrator shall attend the hearing upon all claims, and shall protect and defend the interests of the estate, and shall file any claim or claims of the deceased within his knowledge, in off-set to the claims of the creditors; and the court shall allow the balance against or in favor of the estate, as it shall find the same to be; but no claims barred by the statutes of limitations shall be allowed, against or in favor of the estate.

Referees.

SEC. 9. In case the executor or administrator or any creditor shall deem it, the court shall refer any claim and the set-offs thereto, to three disinterested referees, one to be chosen by each party, and the third to be agreed on by the parties, or, if they cannot agree then by the other two, and if they cannot agree, then by the court.

Duties of.

SEC. 10. The referees shall be sworn to faithfully and impartially hear and try the matters referred to them, and they shall fix on a time and place for the hearing and shall notify the parties thereof, at which time and place the parties must be present with their evidence. The referees shall have the same power as referees appointed by the District Court. They are to make their report to the court which appointed them with all convenient speed, and the report is to set forth whether the parties were notified and attended the hearing. The report if not objected to shall be confirmed; if objected to the objections shall be heard, and if deemed sufficient, the report shall be set aside, and the matters may be again referred, or if neither party desires a reference, they may be heard by the court.

SEC. 11. The court shall try and decide upon all claims which by law survive against and in favor of executors and administrators, except claims for the possession or title to real estate, and may examine and allow all demands at their then present value, which may be payable at a future day, or in specified articles, and such demands may be set off in the same manner in favor of the estate, but the executor or administrator may if he choses pay any such debt according to the terms of the contract.

Allowance of demands.

SEC. 12. After the date of the order appointing the hearing as provided in section 2, no action shall be commenced against an executor or administrator, except actions to recover possession of real estate, and actions of replevin, nor shall any attachment or execution be issued against the estate of the deceased, until the expiration of the time limited by the court for the payment of debts.

What actions shall be commenced after date of hearing.

SEC. 13. All actions and suits which may be pending against a deceased person at the time of his death, may, if the cause of action survives, be prosecuted to final judgment, and the executor or administrator may be admitted to defend the same, and if judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the Probate Court, and the amount thereof shall be paid in the same manner as other claims of the same class duly allowed against the estate.

Suits pending at decedent's death how prosecuted.

SEC. 14. Nothing in this chapter shall be construed to prevent an executor or administrator, when he shall think it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his life time, for the recovery of any debt or claim, to final judgment, or from having execution on any judgment.

Prosecution of actions by executor not prevented.

SEC. 15. In such case, the defendant may set off any claim he may have against the deceased, instead of presenting it to the commissioners, and all mutual claims may be set off in such section; and if final judgment shall be rendered against the defendant, the same shall be certified by the court rendering it, to the Probate Court, and the judgment shall be considered the true balance.

Set off.

Final judgment.

SEC. 16. When two or more persons shall be indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them shall die, his estate shall be liable therefor, and it may be allowed by the court, as if the contract had been joint and several, or as if the judgment had been against him alone, and the other parties to such joint contract may be compelled to contribute or to pay the same, if they would have been liable to do so upon payment thereof by the deceased.

Joint contracts.

SEC. 17. The Probate Court shall make and publish all necessary rules for the conduct of the business before it, which shall be subject to alteration and amendment, as circumstances may require.

Rules of Probate Court.

SEC. 18. The executor or administrator may, with the approval of the court, admit claims with the correctness of which he is satisfied, but not until the same have been verified as required by law. The like rule shall be observed in relation to payment or set off to any demand due the estate.

Executors may admit claims.

LIMITATION OF TIME FOR PAYMENT OF DEBTS.

Time for payment of debts &c

SEC. 19. The court at the time of issuing letters, shall by order allow a time within which to dispose of the estate and pay the debts and legacies of the deceased, not exceeding in the first instance eighteen months.

May be extended.

SEC. 20. The time may, on application of the executor or administrator, be extended by the court as often as necessary, not exceeding one year at a time, but the whole time shall not exceed four years from the date of the letters.

Notice of hearing.

SEC. 21. When any such application shall be made, the court may appoint a time for hearing the application, and shall give notice by publication for three weeks, and no such order can be granted unless such notice has been given.

Extension of time in case of death of executor.

SEC. 22. When an executor or administrator shall die, or become incapable of discharging his trust, and a new administrator of the same estate shall be appointed, the court may extend the time for the payment of the debts and legacies beyond the time allowed to the original executor or administrator, not exceeding one year at a time, and not exceeding six months beyond the time which the court might by law allow to such original executor or administrator upon due notice being given as required in the preceding section.

CONTINGENT CLAIMS.

Contingent claims.

SEC. 23. If any person shall be liable as security for the deceased, or have any other contingent claim against the estate, the same may be presented with the proper proof to the court, and if the court shall be satisfied of the justice of the claim, it shall order the executor or administrator to retain in his hands sufficient estate to pay the same when due, or if the estate be insolvent, sufficient to pay the probable proportion of the claimant.

Becoming absolute, how allowed.

SEC. 24. Should such claim become absolute and be presented to the court at any time within two years from the time fixed for creditors to file their claims, it may be allowed by court upon due proof, in the same manner as if presented in the first instance with other claims.

Payment.

SEC. 25. If such claim be allowed, the creditor shall receive payment to the same extent as other claimants, if the estate so retained be sufficient for that purpose; but if not finally allowed, or if the amount so retained be not wholly exhausted in the payment of such claims, the amount so retained, or the residue thereof, shall be disposed of to the persons entitled to the same.

If absolute, how presented.

SEC. 26. If such claim becomes absolute at any time after the time limited in sec. 20, of this chapter, the creditor may present and prove the same before the court at any time within one year after it shall become absolute, and if allowed, the executor or administrator shall pay it if he has the assets sufficient for that purpose, and if not, then as far as he has assets to pay: and if real or personal property shall afterwards come to his possession, he shall pay such claim, or so much thereof as he shall have assets

with which to pay, not exceeding the proportion of other creditors.

SEC. 27. When a claim shall be presented within one year from the time when it shall accrue, and be established, as mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the creditor shall have the right to recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees or legatees, who shall have received sufficient real and personal property from the estate.

If assets are insufficient.

SEC. 28. If an action shall be commenced against any executor or administrator on such claim, as is mentioned in the twenty-second section, and for the payment of which sufficient assets shall not have been retained, as before provided in this chapter, the executor or administrator may give notice under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

Notice under plea.

SEC. 29. If it shall appear on the trial of such action that the defendant had fully administered at the time the claim was presented, and had no assets which could be lawfully appropriated for that purpose, he shall be discharged, and shall have judgment for his costs; but if it shall be found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only as shall be equal to the amount of assets in his hands.

In case of no assets, the defendant shall have judgment.

SEC. 30. When the heirs, devisees or legatees, shall have received real or personal estate, and shall be liable for any debts as mentioned in this chapter, they shall be liable in proportion to the estate they may have respectively received; and the creditor may have any proper action or suit in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees or legatees to the amount of the estate they may have respectively received, but no such action shall be maintained unless commenced within one year from the time the claim shall be allowed or established.

Heirs, how far liable for debts.

Limitation,

SEC. 31. If by will of the deceased, any part of his estate, or any devisees or legatees shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only according to the will.

Devisees when liable.

SEC. 32. If all the persons liable for the payment of any such debt, shall not be included in the action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred, but the court before which it shall be pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

When suit not barred.

SEC. 33. If more than one person shall be liable as aforesaid, and the creditor shall bring a suit in chancery against all or a part of the persons so liable, and the persons liable shall dispute the debt or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the District Court of the county in which the estate is settled; and the court of chancery shall ascertain and deter-

Amendments allowed.

Court of Chancery may order an issue.

mine how much each is liable to pay, and may award execution therefor.

Executor of a devisee liable.

SEC. 34. If any of the heirs, devisees or legatees, shall die without having paid his just share of the debts, his executor shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living.

When a devisee pays more than his share.

SEC. 35. When any of the heirs, devisees or legatees, shall pay more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the case of devisees and legatees in the preceding section of this chapter.

Affidavit of publication to be recorded.

SEC. 36. The court shall perpetuate the evidence of publication of the notice mentioned in Sec. 2, by causing an affidavit of the fact of publication, in what paper, for what length of time, when commenced and when ended, with a copy of the printed notice attached, to be recorded in the proper books of the office ; and if any further notice has been given, the affidavit shall specify the same particularly.

DISTRIBUTION OF ASSETS AMONG THE CREDITORS, &C.

When the debts are to be paid.

SEC. 37. After the claims are all heard and disposed of in the court, if it shall appear that there are assets in the possession of the executor or administrator sufficient to pay all the debts, he must, under the order of the court, pay the same in full within the time or times limited by the court for that purpose.

In case the assets are insufficient.

SEC. 38. If the assets which the executor or administrator may have received, and which can be appropriated to the payment of debts, shall not be sufficient, he shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order : 1. The necessary funeral expenses : 2. The expenses of the last sickness : 3. Debts having a preference by the laws of the United States : 4. Debts due to payment of creditors whose payments are a lien on real estate, and debts due by mortgage on real estate : 5. Debts due to other creditors.

Distribution of assets.

SEC. 39. If there shall not be assets enough to pay all the debts of any one class, each creditor [that class] shall be paid a dividend in proportion to his claim : and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

Suspension of decree.

SEC. 40. If an appeal shall have been taken from the decision of the court, and shall remain undetermined, the Probate Court may suspend the decree for the payment of debts, or may order a distribution among the creditors whose claims shall have been allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim which may have been disputed and appealed.

How paid on final settlement.

SEC. 41. When the disputed claim shall have been finally settled, the Probate Court shall order the same to be paid out of the assets retained, to the same extent, and in the same proportion as the claims of the other creditors.

SEC. 42. If the whole of the debts shall not have been paid

by the first distribution, and if the whole assets shall not have been distributed, or if other assets shall afterwards come to the hands of the executor or administrator, the court may, from time to time, according to the circumstances of the case, make further order for the distribution of assets.

Distribution of additional assets

SEC. 43. Whenever an order shall have been made by the court for the distribution of the assets among the creditors, the executor or administrator, after the time of payment shall arrive, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt; or he shall be liable on his bond, and the same may be put in suit, on the application of a creditor, whose debt or dividend shall not be paid as above mentioned.

Executor, when liable.

SEC. 44. When the time for paying the debts of a deceased person shall be finally limited by order of the court, or by the expiration of the time allowed for that purpose, whether the estate shall be insolvent or not, the court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors, of the time appointed or limited for the payment of such debts; which notice shall be given by publishing the same three weeks, and in such other manner as the court may direct.

Notice to be given.

SEC. 45. If, after notice shall have been given as provided in the preceding section, any creditor shall neglect to demand from the executor or administrator his debt, or the dividend thereon, within two years from the time so limited for the payment of the debts, or if the notice shall be given after such time, within two years from the last publication, the claim of such creditor shall be forever barred.

Claim how barred.

SEC. 46. In case any legatee or creditor is a minor, the legacy, debt or dividend, if of the value or amount of fifty dollars or under, must be paid to the father if living, and is a suitable person; and if not, then to his mother if living, and is a suitable person; and if not, then to his general guardian, for the benefit of such person.

In case legatee is a minor.

SEC. 47. Should the legacy, debt or dividend, in such case, be more than fifty dollars in value or amount, it shall, under the order of the court, be paid to the general guardian of the minor, and if he has none, the court shall proceed according to law and appoint one, who, before receiving the same, shall give such security to the minor as the court shall approve, for the faithful application of, and accounting for such legacy, debt or dividend: which security shall be kept in the Probate office, and be there recorded.

General guardian.

SEC. 48. Such guardian, under the direction of the court, shall invest, collect in and re-invest as shall be necessary, the legacy, debt or dividend, in unincumbered real estate, or loan the same to the best advantage upon annual interest, well secured by bond and mortgage on unincumbered real estate of the value of at least twice the amount of the debt to be secured, exclusive of buildings; and the interest may be applied, under the direction of the court, to the support and education of the minor, but if not needed for that purpose, it shall be invested as above directed.

Duties of guardian.

When minor arrives at majority

SEC. 49. When of age, the minor shall be entitled to the securities so taken, and all moneys and interest that may have been received: in case of his death before he comes of age, they shall go to his executor or administrator if any shall be appointed, if not, to his heirs at law.

Approved January 26th, 1856.

CHAPTER XLIII.

THE DISTRIBUTION AND PARTITION OF REAL ESTATES.

Partition of estates.

SEC. 1. Before any partition or division of any estate among the heirs, devisees or legatees, an allowance shall be made for the necessary expenses of the support of the children of the deceased, under seven years of age; and the court may order the executor or administrator to retain in his hands sufficient estate for that purpose, except where some provision shall have been made by will for their support.

Estate, how assigned.

SEC. 2. After the payment of the debts, funeral charges, and expenses of administration, and after the allowances made for the expense of the maintenance of the family of the deceased, and for the support of the children under seven years of age, and after the assignment to the widow of her dower and of her share in the personal estate, or when sufficient effects shall be reserved in the hands of the executor or administrator for the above purposes, the Probate Court shall, by a decree for that purpose, assign the residue of the estate, if any, to such other persons as are by law entitled to the same.

Estates, how to descend.

SEC. 3. When any person shall die seized of any lands, tenements, or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, they shall descend subject to his debts, in the manner following:

Same.

1st. In equal shares to his children, and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise they shall take according to the right of representation:

Same.

2d. If he shall leave no issue, his estate shall descend to his widow during her natural lifetime, and after her decease, to his father; and if he shall have no issue or widow, his estate shall descend to his father:

Same.

3d. If he shall have no issue, nor widow, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation; *provided* that if he shall leave a mother, also, she shall take an equal share with his brothers and sisters:

4th. If the intestate shall leave no issue, nor widow, nor

father, and no brother nor sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters : Same.

5th. If the intestate shall leave no issue, nor widow, and no father, mother, brother, nor sister, his estate shall descend to his next of kin in equal degree ; excepting, that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote : *Provided, however,* Same.

6th. If any person shall die, leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation : Same.

7th. If, at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall be also dead, and any of them shall have left issue, the estate that came to said child, by inheritance from his said parent, shall descend to all the issue of other children of the said parent, and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally ; otherwise they shall take according to the right of representation : Same.

8th. If the intestate shall leave a widow, and no kindred, his estate shall descend to such widow : Same.

9th. If the intestate shall leave no widow or kindred, his estate shall escheat to this territory, for the use of the primary school fund. Same.

SEC. 4. Every illegitimate child shall be considered as heir of his mother, and shall inherit her estate, in like manner as if born in lawful wedlock. Illegitimate children.

SEC. 5. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother ; if she be dead, it shall descend to the relatives of the intestate on the part of the mother, as if the intestate had been legitimate. Estate, how descend.

SEC. 6. When, after the birth of an illegitimate child, his parents shall intermarry, and his father shall, after the marriage, acknowledge him as his child, such child shall be considered as legitimate to all intents and purposes. Child, when legitimate.

SEC. 7. The degrees of kindred shall be computed according to the rules of the civil law ; and kindred of the half blood shall inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor, shall be excluded from such inheritance. Degrees of kindred.

SEC. 8. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and dis- Estate given in life time.

tribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the estate of the intestate.

Division, how made.

SEC. 9. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received, shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Same.

SEC. 10. If such advancement be made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided; and if it be in personal estate, it shall be considered as a part of the personal estate; and if, in either case, it shall exceed the share of real or of personal estate respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make his whole share equal to those of the other heirs who are in the same degree with him.

Gifts and grants.

SEC. 11. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made; or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

Value, how estimated.

SEC. 12. If the value of the estate so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving, it, it shall be considered as of that value in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

If child shall die.

SEC. 13. If any child or other lineal descendant so advanced, shall die before the intestate leaving issue, the advancement shall be taken into consideration, in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, in like manner as if the advancement had been made directly to them.

Husband or widow as tenant

SEC. 14. Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower; nor shall the same affect any limitation of an estate by deed or will.

Posthumous children.

SEC. 15. Inheritance or succession "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would have taken if living. Posthumous children are considered as living, at the death of their parents.

Shares, how recovered.

SEC. 16. In making such decree as is mentioned in section 2 of this chapter, the court shall name the persons, and the proportions or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same.

SEC. 17. Such decree may be made on the application of the executor or administrator, or of any person interested in the

estate; but no heir, devisee or legatee shall be entitled to a decree for his share, until payment of the debts, and allowances and expenses mentioned in the preceding section shall have been made or provided for, unless he shall give a bond to the judge of probate, with such surety or sureties as the court may direct, to secure the payment of his just proportion of such debts and expenses, or such part thereof as shall remain unprovided for, and to indemnify the executor or administrator against the same.

Decree, how made.

SEC. 18. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three discreet and disinterested persons, to be appointed commissioners for that purpose by the court, who shall be duly sworn to the faithful discharge of their duties, and the clerk shall issue a warrant to them for that purpose.

Undivided estate.

SEC. 19. If the real estate shall lie in different counties, the court may, if it shall be judged proper, appoint different commissioners for each county, and in such case, the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the court, make division of such real estate wherever situated within this Territory.

Court may appoint commissioners.

SEC. 20. Such partition and distribution may be ordered, on the petition of any of the persons interested; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, who reside in this Territory, or their guardians, and to their agents, attorneys, or guardians, if there be any in this Territory, of such as reside out of the Territory, either personally or by publication, as the court shall direct.

Notice to be given of distribution.

SEC. 21. Partition of the real estate may be made, as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be set to the persons holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

Partition, how made.

SEC. 22. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished; unless any two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided.

Same.

SEC. 23. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to shares therein who will accept it, and among children, preferring the elder to the younger; provided the party so accepting the whole, shall pay to the other parties interested, their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the Probate Court, and sworn for that purpose.

Court may assign.

SEC. 24. When any tract of land, messuage or tenement shall

Commissioners
may award.

be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving precedence as prescribed in the preceding section, provided the party so accepting it shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the petition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court, until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

Commissioners
may divide and
sever.

SEC. 25. When partition of real estate among heirs or devisees shall be required, or dower is to be assigned to a widow in the same, and such real estate shall be in common and undivided with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common, and such division so made, and established by the court, shall be binding on all the persons interested.

Guardians, how
appointed.

SEC. 26. Before any partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as shall reside out of the Territory; and notice of the appointment of such agents shall be given to the commissioners in their warrant; and notice shall be given to all the parties interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Commissioners
to make report.

SEC. 27. The commissioners shall make report of their proceedings in writing to the court; and the court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners or appoint others; and the report when finally accepted and established, shall be recorded in the records of the court; and a copy thereof attested by the clerk under the seal of the court, shall be recorded in the office of the register of deeds of the county where the lands lie.

Decree to be
made by court.

SEC. 28. When the Probate Court shall make a decree, assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them shall request that such partition be made.

Advancements,
how determined

SEC. 29. All questions as to advancements made or alleged to have been made by the deceased to any heirs, may be heard and determined by the court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners; and the final decree of the court, or, in case of appeal, of the District or Supreme Court, shall be binding on all persons interested in the estate.

Partition con-
clusive.

SEC. 30. The partition when finally confirmed and established shall be conclusive on all the heirs and devisees, and all persons claiming under them, upon all persons interested.

SEC. 31. If, at the time of the partition or distribution of any

estate as provided in this chapter, the executor or administrator shall have retained sufficient effects in his hands, which may be lawfully applied for that purpose, the expenses of such partition or distribution may be paid by such executor or administrator, where it shall appear to the court just and equitable, and in the case of a will not inconsistent with the intention of the testator.

Expenses paid
by executor.

SEC. 32. But if there are no effects in the hands of the executor or administrator which may be lawfully applied to that purpose, the expenses and charges of the petition being ascertained by the Probate Court, shall be paid by all the parties interested in the partition, in proportion to their respective shares or interests in the premises; and the proportions shall be settled and allowed by the Probate Court; and if any one shall neglect to pay the sum assessed on him by the court, an execution may be issued therefor against him by such court, in favor of the persons entitled to the same.

Expenses may
be paid by parties.

SEC. 33. When the term of a widow entitled to dower or other life estate in the hands of a deceased person, shall expire, the reversion may be assigned to the persons entitled to the same, and partition thereof may be made, in the manner prescribed in this chapter in relation to other estates of deceased persons.

Revision may be
assigned.

SEC. 34. When any estate shall be assigned by decree of the court, or be distributed by commissioners, as provided in this chapter, to any person residing out of the Territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

Court may ap-
point agent.

SEC. 35. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may examine and allow a reasonable sum out of the profits of the estate for his services and expenses.

Agent to give
bond.

Approved January 26th, 1856.

CHAPTER XLIV.

ASSIGNMENT OF DOWER.

SEC. 1. The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of one-third part of all the lands whereof her husband became seized at any time during the marriage, and also, of all lands of which her husband died seized, unless she is lawfully barred thereof.

Widow entitled
to dower.

SEC. 2. If a husband become seized of an estate of inheritance in lands at any [time] during coverture, and exchange them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by the com-

When to elect
dower.

mencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower in the lands received in exchange.

When not entitled to dower.

SEC. 3. When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

Widow entitled to surplus.

SEC. 4. Where, in either of the cases mentioned in the last preceding section, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him shall, after the death of the husband, cause the mortgaged premises to be sold, by virtue of such mortgage, and any surplus [that] shall remain after payment of the moneys due thereon, and the cost and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus, for her life, as dower.

Same.

SEC. 5. If in either of the cases above specified, the heir or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of one-third of the residue after such deduction.

Lands, how estimated.

SEC. 6. When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated, in setting out the dower, according to their value at the time when they were so aliened.

Proceedings for dower, how commenced.

SEC. 7. When a widow is entitled to dower in lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her, in whatever counties the lands may lie, by the Court of Probate for the county in which the estate of the husband is settled, upon application of the widow or any other person interested in the lands, notice of which application shall be given to such heirs, devisees or other persons, in such manner as the court shall direct.

Same.

SEC. 8. For the purpose of assigning such dower, the court of probate shall issue a warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Commissioners to be sworn.

SEC. 9. The Commissioners shall be sworn to the faithful discharge of their duties, and shall as soon [as] may be, set off the dower according to the command of such warrant and make return of their doings, with an account of their charges and expenses, in writing, to the Probate Court, and the same being accepted and recorded, and an attested copy thereof recorded in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirma-

tion be set aside or reversed on appeal; and one-half of the costs of such proceedings shall be paid by the widow, and the other half by the adverse party.

SEC. 10. When the estate out of which dower is to be assigned consists of a mill, or other tenement which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate. Dower may be assigned of rents and profits.

SEC. 11. When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive one-third part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned. Widow may occupy lands.

SEC. 12. A married woman residing within this Territory, may bar her right of dower in any estate conveyed by her husband, or by his guardian, if he be under guardianship, by joining in the deed of conveyance, or in a subsequent one, or by her separate deed, properly acknowledged. May bar right of dower.

SEC. 13. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her assent before the marriage: *Provided*, such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband. Same.

SEC. 14. Such assent shall be expressed, if the woman be of full age, by her becoming a party to the conveyance by which it is settled, and if she be under age, by her joining with the father or guardian in such conveyance. Same.

SEC. 15. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband. Same.

SEC. 16. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband, but she shall not be entitled to both. Same.

SEC. 17. If any lands be devised to a woman, or other provision made for her in the will of her husband, she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator. Widow to make election.

SEC. 18. When a widow shall be entitled to an election under either of the two last preceding sections, she shall be deemed to have elected to take such jointure, devise, or other provision, unless within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower. To commence proceedings within one year.

SEC. 19. If a woman is lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or is deprived of the provisions made for her by will or otherwise, in lieu of May be endowed anew.

dower, she may be endowed anew, in like manner as if such assignment, jointure or other provision had not been made.

Alien entitled to dower.

SEC. 20. A woman being an alien, shall not on that account be barred of her dower, and any woman residing out of the Territory, shall be entitled to dower of the lands of her deceased husband, lying in this Territory, of which her husband died seized, and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the Territory at the time of his death.

To keep property in good repair.

SEC. 21. No woman, who shall be endowed of any lands, shall commit or suffer any waste on the same; but every woman so endowed shall maintain the houses and tenements, with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate estate of inheritance therein for all damages occasioned by any waste committed or suffered by her.

Time allowed widow to remain.

SEC. 22. A widow may remain in the dwelling house of her husband one year after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of his estate for one year.

May recover damages.

SEC. 23. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.

Amount of damages.

SEC. 24. Such damages shall be one-third part of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in a suit against the heirs of her husband, from the time of his death; and in suits against other persons from the time of her demanding her dower of such persons.

Same.

SEC. 25. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

Court may award money.

SEC. 26. In any suit hereafter to be commenced by any widow for the recovery of dower in lands which were alienated by her husband in his life time, and where dower cannot be assigned therein by metes and bounds without injustice or manifest injury to the widow, or to the owner or owners, or person or persons in possession thereof, or some one of them, the court having cognizance of the matter may award and adjudge a sum of money in lieu of dower, to be paid to the widow, or may assign to her as tenant in common a just proportion of the rents, issues and profits of said lands, regard being had in all cases to the true value of the lands at the time of such alienation by the husband, and to the probable duration of the life of the dowress, at the time such sum of money shall be adjudged, or such rents, issues and profits shall be assigned to her.

Where dower is claimed by two.

SEC. 27. Where dower in any lands may be claimed by two or more widows, the one who was first seized therein shall be first entitled thereto, and in all cases where dower in a land shall have been assigned, or where it shall appear that the owner or owners, or person or persons having an interest therein, shall

have made full satisfaction to, and has obtained a discharge from the person recovering or having a prior right to dower therein, by reason of the prior seizin of her husband, the said land shall not be subject to any other claim for dower during the lifetime of the person so recovering or who has received satisfaction and given a discharge as aforesaid.

SEC. 28. When a widow shall recover her dower in any lands alienated by the heirs of her husband, she shall be entitled to recover of such heir, in an action on the case, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such grantee, and any amount recovered as damages, from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

May recover for withholding dower.

SEC. 29. When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.

When assignment is a bar.

SEC. 30. When a widow not having right to dower, shall, during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heir or other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

Infants, how protected.

ESTATES BY THE CURTESY.

SEC. 31. When any man and his wife shall be seized in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by the curtesy: *Provided*, That if the wife, at her death, shall leave issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the curtesy.

Approved January 26th, 1856.

CHAPTER XLV.

THE SALE OF LANDS FOR THE PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

SEC. 1. When the personal estate of any deceased person, in the hands of his executor or administrator, shall be insufficient to pay all his debts, with the charges of administering his estate, his executor or administrator may sell his real estate, for that

Executor may sell real estate.

purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

Petition of executor what to set forth:

SEC. 2. In order to obtain such license, the executor or administrator shall present a petition to the Probate Court from which he received his appointment, setting forth:

1. The amount of personal estate that has come to his hands;
2. The application thereof;
3. The debts outstanding against the deceased as far as the same can be ascertained;
4. A description of all the real estate of which the deceased died seized, with the value and condition of the respective portions or lots, and whether occupied or not, and if occupied the names of the occupants; and
5. The names and ages of the devisees, if any, and of the heirs of the deceased; and such petition shall be verified by the oath of the party presenting the same.

Order of court.

SEC. 3. If upon such application to the court it shall appear that all the personal estate of the deceased, applicable to the payment of his debts, have been applied to that purpose, and that there remain debts unpaid, for the satisfaction of which a sale may be made under the provisions of this chapter, it shall make an order directing all persons interested in the estate to appear before it at a time and place therein to be specified, not less than six weeks, and not more than ten weeks, from the time of making such order, to show cause why authority should not be given to the executors or administrators applying therefor, to sell so much of the real estate of their testator or intestate, as shall be necessary to pay such debts.

Court may appoint guardians.

SEC. 4. If it shall appear by the petition or otherwise, that any of the devisees or heirs are minors, and have no general guardians, the court shall immediately, and before any further proceeding is had in the premises, cause general guardians to be appointed for them as the law directs, whose duty it shall be to appear for, attend to, take care of, and protect the interests of their wards.

Publication of order.

SEC. 5. Every such order to show cause, shall be published for ~~four~~ four weeks, and a copy thereof shall be served personally, on every person in the occupation of the premises, of which a sale is desired, wherever the same may be situated, and on the widow and heirs and devisees of the deceased, residing in the county of the judge, at least fourteen days before the day therein appointed for showing cause.

Copy of order may be served.

SEC. 6. If such personal service cannot be made, or if such widow, heirs or devisees, or any of them, do not reside in the county, but reside in the Territory, a copy of such order may be served personally, forty days before the day of showing cause, or by publishing the same four weeks; if such persons, or any of them, reside out of the Territory, or cannot be found therein, the same shall be published as above, for six weeks, or a copy served personally six weeks before the day of showing cause.

Hearing and proofs.

SEC. 7. At the time and place appointed in such order, or at such other time as the hearing shall [have] adjourned to, if the consent in writing to such sale of all the persons interested

therein shall be filed and proved, the court shall at once proceed to the hearing, but in the absence of such consent, the court, upon proof of the due service of publication of a copy of the order, shall proceed to the hearing of the allegations and proofs on the part of the petitioner, and of all persons interested, who shall think proper to oppose the application.

SEC. 8. On such hearing, it shall be competent to any heir or devisee of the real estate in question, and to any person claiming under them, or other persons interested in the estate to show that the whole of the personal estate of the deceased, has not been applied by the executors or administrators, to the payment of his debts, to contest the validity and legality of any debts, demands, or claims, which may be represented as existing against the deceased, and to set up the statute of limitations in bar to such claims; and the admission of any such claims so barred by any executor or administrator, shall not be deemed to receive the same, so as in any way to affect the real estate of the deceased. Validity of demands.

SEC. 9. The executor or administrator may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the Court, in the same manner, and with the like effect as in other cases. Examination.

SEC. 10. The Court shall make no order for the sale of the real property of the deceased, until upon due examination he shall be satisfied— Sale of real estate, how declared.

1. That the executors or administrators making such application, have fully complied with the preceding provisions of this chapter.
2. That the debts, for the purpose of satisfying which, the application is made, are justly due and owing, and that they are not secured by judgment or mortgage, upon, or expressly charged on the real estate of the deceased; or if such debts be secured by a mortgage or charge on a portion of such estate, then, that the remedies of the creditors, by virtue of such mortgage or charge, have been exhausted.
3. That the personal estate of the deceased is insufficient for the payment of such debts, and that the whole of such estate which could have been applied to the payment of the debts of the deceased, has been duly applied for that purpose.

SEC. 11. If it shall appear to the Court that it is necessary to sell a part of the real estate, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, said Court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned. Sale of part of real estate

SEC. 12. When the executor or administrator is authorized to sell more than is necessary for the payment of debts, he shall, before the sale, give bond to the judge of probate, with sufficient sureties to account for all the proceeds of the sale; that shall remain after payment of the debts and charges, and to dispose of the same according to law; and in all cases, where license is Executor to give bond.

granted for the sale of real estate, the Court may require a further bond from the executor or administrator when he shall deem it necessary.

Assets.

SEC. 13. The proceeds of any such real estate sold for the payment of debts, and the charges of administration, as provided in this chapter, shall be deemed assets in the hands of the executor or administrator, in like manner as if the same had been originally part of the goods and chattels of the deceased; and the executor or administrator, and the sureties in his administration bond shall be accountable and chargeable therefor.

License, when granted.

SEC. 14. No license to sell real estate shall be granted, if any of the persons interested in the estate shall give bond to the judge of probate in such sum and with such sureties as he shall direct and approve, with condition to pay all the debts and the expenses of administration, so far as the goods and chattels, rights and credits of the deceased shall be insufficient therefor, within such time as the Court shall direct.

Bond, how prosecuted.

SEC. 15. The bond mentioned in the preceding section, shall be for the security, and may be prosecuted for the benefit of the creditors, as well as the executor or administrator.

Order for sale.

SEC. 16. If the Court shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate is necessary for the payment of valid claims against the deceased, and charges of administration, or if such sale be assented to by all persons interested, he shall thereupon make an order of sale, authorizing the executor or administrator to sell the whole, or so much, and such part of the real estate described in the petition, as he shall judge necessary or beneficial.

Order, what to specify.

SEC. 17. The order shall specify the lands to be sold; and the Court may therein direct the order in which several tracts, lots, or parcels shall be sold; and if it appear that any part of such real estate has been devised, and not charged in such devise, with the payment of debts, the Court shall order that part descended to heirs, to be sold before that so devised; and if it appear that any lands devised or descended have been sold by the heirs or devisees, then the lands in their hands remaining unsold, shall be ordered to be first sold.

Copy of order of sale.

SEC. 18. Upon the making of such order, and the filing in the Court of such bond, as is required by the provisions of this chapter, a certified copy of the order of sale shall be delivered by the clerk to the executor or administrator, who shall thereupon be authorized to sell the real estate as therein directed, within one year after the making of the order, but not after that period.

License of sale.

SEC. 19. License to sell real estate as provided in this chapter, may extend to the reversion of the dower of the widow of the deceased person; and if such reversion be not sold with the other real estate, it may be sold after the expiration of the widow's term.

Sale to be posted.

SEC. 20. When a sale is ordered, notice of the time and place of holding the same, shall be posted up in three of the most public places in the township in which the land is situated, and shall

also be published for six weeks ; in which notice, the lands and the tenements to be sold, shall be described with common certainty ; and in all cases, the improvements thereon, if any, shall be stated.

SEC. 21. Such sale shall be in the county where the lands are situated, and such place as the executor or administrator shall think best calculated to produce the highest price at public vendue, between the hours of nine o'clock in the morning, and the setting of the sun, the same day. To be in county where lands are situate.

SEC. 22. The executor or administrator making the sale, and the guardian of any minor heir of the deceased, shall not directly or indirectly purchase, or be interested in the purchase of any part of the real estate so sold, and all sales made contrary to this provision, shall be void ; but this section shall not prohibit any such purchase by a guardian, for the benefit of his ward. Executor not to purchase.

SEC. 23. On such sale, the executor or administrator may give such credit, not exceeding three years, and for not more than three-fourths of the purchase-money, as shall seem best calculated to produce the highest price, and as shall have been directed, or shall be approved by the Court, and shall secure the moneys for credit given, by a bond of the purchaser, and by a mortgage of the premises sold. May give credit

SEC. 24. The executor or administrator making any sale, shall immediately make a return of his proceedings upon the order of sale, in pursuance of which it is made to the Court granting the same, who shall examine the proceedings, and may also examine such executor or administrator, or any other person on oath, touching the same ; and if he shall be of opinion that the proceedings were unfair, or that the sum bid, is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent., exclusive of the expense of a new sale may be obtained, he shall vacate such sale, and direct another to be had, of which, notice shall be given, and the sale shall be in all respects, conducted as if no previous sale had taken place. Return of proceedings.

SEC. 25. If it shall appear to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum, as above specified, cannot be obtained, he shall make an order confirming such sale, and directing conveyances to be executed. Sale, how confirmed.

SEC. 26. The several clerks shall record in books, to be provided by them for that purpose, all orders and decrees made by the courts, upon any proceedings before them in relation to the sale of real estate, and shall file and preserve all papers, returns, vouchers, and documents connected with such proceedings. Orders and decrees, how recorded.

SEC. 27. Every executor or administrator authorized to sell real estate, as provided in the chapter, shall, before giving the notice required by law of such sale, take, and subscribe an oath before the judge or some other officer authorized to administer oaths, that in fixing on the time and place of sale, and disposing of the real estate which he is licensed to sell, he will use his best judgment, and exert his best endeavors to dispose of the same in such manner as will be most for the advantage of all per- Oath of executor

sons interested : which oath shall be filed with the clerk, before giving such notice, and shall be recorded by him, noting the time when filed.

Affidavit.

SEC. 28. An affidavit of the executor or administrator, or of some other person having knowledge of the fact, that notice of any such sale was given, as provided in this chapter, being made before some officer authorized to administer oaths, and filed and recorded in the Probate Court, together with a copy of the notice, shall be admitted as evidence of the time, place and manner of giving such notice.

Postponement.

SEC. 29. If, at the appointed time for any such sale, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn the same from time to time, not exceeding in all three months.

Notice.

SEC. 30. In case of such adjournment, notice thereof shall be given by a public declaration at the time and place first appointed for the sale ; and if the adjournment shall be for more than five days, further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

Legacy.

SEC. 31. When a testator shall have given any legacy, by a will that is effectual to pass or charge real estate, and his goods, chattels, rights and credits, shall be insufficient to pay such legacy, together with his debts and the charges of administration, the executor or administrator, with the will annexed, may be licensed to sell his real estate for that purpose, in the same manner and upon the same terms and conditions as are prescribed in this chapter, in the case of a sale for the payment of debts.

Contract for land may be sold

SEC. 32. If a deceased person at the time of his death was possessed of a contract for the purchase of land, his interest in such land, and under such contract, may be sold on the application of his executor or administrator, in the same cases and in the same manner as if he had died seized of such land ; and the same proceedings may be had for that purpose as are prescribed in this chapter, in respect to lands of which he died seized, except as hereinafter provided.

Purchaser to execute bond.

SEC. 33. Such sale shall be made subject to all payments that may thereafter become due on such contract, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the court, until the purchaser shall execute a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge shall approve.

Condition of bond.

SEC. 34. Such bond shall be conditioned that such purchaser will make all payments for such lands, that shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the person so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract ; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

SEC. 35. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of such contract; which assignment shall vest in the purchaser, his heirs, and assignees all the right and title of the persons entitled to the interest of the deceased in the land sold at the time of the sale; and such person shall have the same rights and remedies against the vendor of such land as the deceased would have had if he were living.

Assignment of contract.

SEC. 36. The proceeds of every such sale of the interest of the deceased person in lands under contract, as herein before mentioned, shall be disposed of, in all respects, in the same manner as the proceeds of the sale of lands of which the deceased died seized, according to the provisions of this chapter.

Proceeds, how disposed of.

SEC. 37. All sales and conveyances of lands, made by executors or administrators, pursuant to the provisions of this chapter, should be subject to all charges thereon, by mortgage or otherwise, existing at the time of the death of the testator or intestate; and in case the estate of the deceased shall be in any way liable for the amount secured by any such mortgage, or for any such charge, such sale shall not be confirmed by the court until the purchaser shall execute a bond to the executor or administrator, as required in this chapter, in the case of a sale of a contract for the purchase of lands, on which payments are to become due.

Estate, how liable.

SEC. 38. When an executor or administrator shall be appointed in any other Territory or State, or in any foreign country, on the estate of any person dying out of this territory, and no executor or administrator shall be appointed in the territory, the foreign executor or administrator may file an authenticated copy of his appointment in the Probate Court, of any county in which there may be any real estate of the deceased.

Foreign executors.

SEC. 39. Upon filing such authenticated copy of his appointment, such foreign executor or administrator may be licensed by the same Probate Court to sell real estate for the payment of debts or legacies, and charges of administration, in the same manner, and upon the same terms and conditions as are prescribed in the case of an executor or administrator appointed in this territory, excepting in the particulars in which a different provision is hereinafter made.

License by court

SEC. 40. When it shall appear to the court granting the license, that such foreign executor or administrator is bound with sufficient surety or sureties, in the state or country in which he was appointed, to account for the proceeds of such sale, for the payment of debts, or legacies, and charges of administration, and a copy of such bond duly authenticated, shall be filed in such court, no further bond for that purpose shall be required of him by the court.

Surety.

SEC. 41. If any authenticated copy of such bond shall not be filed, as mentioned in the preceding section, such foreign executor or administrator, before making such sale, shall give bond, with sufficient sureties, to the judge of probate, with condition to account for and dispose of the proceeds of such sale for the payment of the debts or legacies of the deceased, and the charges of

Condition of bond.

administration according to the law of the state or country in which he was appointed.

Bond.

SEC. 42. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies and charges of administration, as before provided for in this chapter, he shall, before making the sale, give bond with sufficient sureties to the judge of Probate, with condition to account to him for all the proceeds of the sale that shall remain after the payment of the said debts, legacies and charges, and to dispose of the same according to law.

Guardian may sell property.

SEC. 43. When the goods, chattels, rights and credits in the hands of the guardian of any widow, or of any idiot or insane person, or any person under guardianship on account of excessive drinking, gaming, idleness, or debauchery, shall be insufficient to pay all the just debts of the ward, with the charges of managing his estate, the guardian may be licensed by the Probate Court of the county in which such guardian was appointed, to sell his real estate for that purpose, in like manner and upon the same terms and conditions, as are prescribed in this chapter in the case of a sale by executors or administrators, excepting in the particulars in which a different provision is hereinafter made.

Court may license sale.

SEC. 44. If it shall be represented by the guardian in his petition, and shall appear to the Court that it is necessary to sell some part of the real estate of the ward, and that by such partial sale the residue of the real estate, or some specific part thereof, would be greatly injured, the Court may license a sale of the whole estate, or of such part thereof as the Court shall judge necessary, and most for the interest of all concerned.

Bond of guardian.

SEC. 45. The guardian shall give bond to the judge of Probate to account for the surplus of the proceeds of the sale, in like manner as prescribed in this chapter, in the case of a like sale by an executor or administrator.

Sale, how approved.

SEC. 46. No license shall be granted to any guardian to sell the real estate of his ward, as provided in this chapter, in any case excepting that of minors, unless the superintendents of the poor of the county of which the ward is the inhabitant, or in which he resides, shall certify to the Court of Probate, in writing, their approbation of such proposed sale, and that they deem it necessary.

Petition.

SEC. 47. All those who are next of kin, and heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear as such and answer to the petition of the guardian; and when personal notice of the time and place of hearing the petition is required to be given, they shall be notified as persons interested, according to the provisions respecting similar sales, by executors or administrators in this chapter.

Foreign guardian.

SEC. 48. When any minor, insane person, or spendthrift residing out of this Territory shall be put under guardianship in the State or country in which he resides, and shall have no guardian appointed in this Territory, the foreign guardian may file an authenticated copy of his appointment in the Probate Court of any county in which there may be any real estate of the ward.

SEC. 49. After filing an authenticated copy of his appointment, Same.
such foreign guardian may be licensed to sell the real estate for the payment of the debts of the ward, and the charges of managing his estate, in the same manner and upon the same terms and conditions as are prescribed in this chapter in case of a guardian appointed in this Territory, excepting in the particulars wherein a different provision is hereinafter made.

SEC. 50. When it shall appear to the Court that the foreign Bond.
guardian is bound, with sufficient surety or sureties, in the State or country where he was appointed, to account for the proceeds of such sale, an authenticated copy of such bond shall be filed in the Probate Court, and no further bond shall be required here; otherwise he shall give bond in like manner as is prescribed in this chapter, in the case of sales by foreign executor or administrators.

SEC. 51. When such foreign guardian is authorized to sell Same.
more than is necessary to pay the debts and charges, he shall, before making the sale, give bond with sufficient surety or sureties, to the judge of Probate, with condition to account for all the proceeds of the sale that shall remain after payment of the said debts and charges, and to dispose of the same according to law.

SEC. 52. In all cases of a sale by an executor or administrator Surplus of sale.
or guardian, of a part or the whole of the real estate of his testator, intestate or ward, under a license granted by any Probate Court, by virtue of the provisions of this chapter, whether such executor, or administrator, or guardian was appointed in this Territory or elsewhere, the surplus of the proceeds of the sale remaining on the final settlement of the accounts, shall be considered as real estate, and disposed of among the persons and in the same proportions as the real estate would have been by the laws of this Territory, if it had not been sold.

SEC. 53. Every guardian, whether appointed in this Territory Oath of guardian.
or elsewhere, when licensed to sell real estate, as provided in this chapter, shall, before giving the notice of sale as required by law, take and subscribe and file in Court an oath like that required in the same case of an executor or administrator, and notice shall be given and the proceedings shall be conducted in the like manner, as is prescribed in the case of an executor or administrator, and the oath and the evidence of giving such notice may be perpetuated in the same manner.

SEC. 54. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, Costs.
by an executor or administrator or guardian, and if it shall appear to the Court either that the petition, or the objection thereto, is unreasonable, the Court may, in its discretion, award costs to the party prevailing, and may enforce the payment thereof by execution or otherwise.

SEC. 55. No action for the recovery of any estate sold by an Action how maintained.
executor or administrator, under the provisions of this chapter, shall be maintained by an heir, or other person claiming under the deceased testator or interest, unless it be commenced within five years next after the sale; and no action for any estate sold in like manner by a guardian shall be maintained by the ward or by

any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, except as hereinafter provided.

Limitation of
commencement
of action.

SEC. 56. The preceding section shall not apply to persons out of the Territory, nor to minors, or others, under any legal disability to sue, at the time when the right of action shall first accrue, but all such persons may commence such action at any time within five years after the removal of the disability, or their return to this Territory.

Action in rela-
tion to estate
sold.

SEC. 57. In case of an action relating to any estate sold by an executor or administrator or guardian, in which an heir or other person claiming under the deceased, or in which the ward, or any person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall appear:

1. That the executor, administrator or guardian was licensed to make the sale by the Probate Court having jurisdiction.
2. That he gave a bond which was approved by the Court of Probate, in case a bond was required upon granting a license.
3. That he took and filed the oath as provided in this chapter.
4. That he gave notice of the time and place of sale as in this chapter provided; and
5. That the premises were sold accordingly, and the sale confirmed by the Court, and that they are held by one who purchased them in good faith.

Neglect of exec-
utor.

SEC. 58. If there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian in relation to such sale, by which any person interested in the estate shall suffer damages, such aggrieved party may recover the same in a suit on the Probate bond, or otherwise, as the case may require.

Validity of sale.

SEC. 59. If the validity of a sale made by an executor, administrator or guardian, shall be drawn in question by any person claiming adversely to the title of the deceased testator or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased person, or the ward, the sale shall not be held void on account of any irregularity in the proceedings; *Provided*, it shall appear that the executor, administrator or guardian was licensed to make the sale by a Probate Court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Penalty.

SEC. 60. Any executor, administrator or guardian who shall fraudulently sell any real estate of his testator, intestate or ward, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages, to be recovered in an action on the case by the person having an estate of inheritance therein.

Approved January 26th, 1856,

CHAPTER XLVI.

ACCOUNTS OF EXECUTORS AND ADMINISTRATORS.

SEC. 1. Every executor and administrator shall be chargeable in his account with the whole of the goods, chattels, rights and credits of the deceased which may come to his possession : also with all the proceeds of the real estate, which may be sold for the payment of debts and legacies, and with all interest, profit and income which shall in any way come to his hands from the estate of the deceased.

Executors and administrators what chargeable with.

SEC. 2. Every executor and administrator shall account for the personal estate of the deceased, as the same shall be appraised, except as provided in the following sections.

Shall account for personal estate.

SEC. 3. An executor or administrator, shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault of any part of the personal estate : and he shall account for the excess when he shall sell any part of the personal estate, for more than the appraisal, and if he shall sell any for less than the appraisal, he shall not be responsible for the loss, if it shall appear to be beneficial to the estate so to sell it.

Shall not make profit or suffer loss by sales.

SEC. 4. The Probate Court may order the personal estate or any part thereof to be sold at probate sale, or at auction, as will be most beneficial to the persons interested in the estate : if the order be to sell at auction, it shall direct the mode of giving notice thereof.

Duty of Probate Court.

SEC. 5. When the executor or administrator shall sell personal estate, under an order of the court, he shall account for the same at the price for which it shall be sold.

Rendition of accounts.

SEC. 6. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

Not accountable for debts.

SEC. 7. The executor or administrator shall also be accountable for the income of the real estate, while it shall remain in his possession : and if he shall use or occupy any part of it, he shall account for it, as may be agreed upon between him and the parties interested, or adjudged by the Probate Court with their assent : and if the parties shall not agree upon the sums to be allowed, the same may be ascertained by one or more disinterested persons, to be appointed by the Probate Court, whose award, being accepted by the court, shall be fine.

Account of income, how determined.

SEC. 8. When an executor or administrator shall neglect to raise money by collecting the debts, or selling the real or personal estate of the deceased, or shall neglect to pay over the money he shall have in his hands, and the value of the estate shall thereby be lessened, or unnecessary cost or interest shall accrue, or the persons intended shall suffer loss, the same shall be deemed waste, and the damages sustained may be charged against the executor or administrator in his account, or he shall be liable therefor on his administration bond.

Penalty of neglect.

SEC. 9. If such executor or administrator shall fail to render his account within the year, or within such further time as the

Penalty and proceedings, in failure to render account.

court shall set, or shall fail to render such further account as the court may from time to time require, or if any executor or administrator whose letters have been revoked shall fail to render an account of his proceedings, when the court shall require him to do so, he may be compelled to do so in the manner directed by law to coerce the return of an inventory, and in case of disobedience the same proceedings may be had to attach the party so disobeying, and discharge him : and the like revocation of the letters granted to him, may be made, in case of the party absconding or concealing himself, so that the order can not be personally served, or of his neglecting to render an account, within thirty days after being committed : and new letters shall be granted with the like effects as in those cases : but no such proceeding to coerce an account shall effect the bond of the executor or administrator, but the same may be put in suit by any person interested in the estate and recovery may be had thereon, for all damages which shall have accrued by not rendering such account.

Vouchers and accounts.

SEC. 10. In rendering such account, every executor or administrator shall produce vouchers for all debts and legacies paid, and for all funeral charges, and just necessary expenses, which vouchers shall be deposited and remain with the clerk of the court : and such executor or administrator may be examined on oath, touching such payments, and also touching any property or effects of the deceased which have come to his hands, and the disposition thereof.

Allowances.

SEC. 11. The court may make allowance to any executor or administrator for the property of the deceased, perished or lost, without the fault of such executor or administrator.

Notice before settlement.

SEC. 12. Before any account of any executor or administrator shall be allowed, notice shall be given to all persons interested, of the time, and place of examining and allowing the same, and such notice may be given personally to such persons as the Probate Court shall judge to be interested, or by publication under the direction of the court.

Attendance at settlement.

SEC. 13. Any creditors, legatees or other persons interested in the estate of the deceased as next of kin or otherwise, may attend the settlement of such account and contest the same : and they, and the executor or administrator shall have process, to be issued by such judge, to compel the attendance of witnesses.

Proceedings.

SEC. 14. The hearing of the allegations, and the proofs of the respective parties, may be adjourned from time to time as may be necessary : and the court may appoint one or more referees, to examine the accounts presented to him, and to make reports thereon subject to his confirmation : and may make a reasonable allowance to such referees, not exceeding two dollars per day, to be paid out of the estate of the deceased.

Final settlement conclusive evidence, in certain cases.

SEC. 15. The final settlement of such account, and the allowance thereof by the court, or upon appeal, shall be deemed conclusive evidence against all persons in any way interested in the estate upon whom the said citation shall be served, either personally or by publication as herein directed of the following facts, and of no others :

1—That the charges made in such account for moneys paid to

creditors, to legatees, to the next of kin, and for necessary expenses, are correct.

2—That such executor or administrator has been charged all the interest for moneys received by him, and embraced in his account, for which he was legally accountable :

3—That the moneys stated in such account, as collected, were all that were collected, on the debts stated in such account, at the time of the settlement thereof : and

4—That the allowance in such account for the decrease in the value of any assets, and charges therein, for the increase in such value were correctly made.

SEC. 16. Whenever an account shall be rendered and finally settled, if it shall appear to the court that any part of the estate remains to be paid or distributed, he shall make an order for the payment and distribution, of what shall so remain, to, and among the creditors, legatees, widow, and next of kin to the deceased according to their respective rights, and in such order shall settle and determine all questions concerning any debt, claim legacy, bequest or distributive share, to whom the same shall be payable, and the sum to be paid to each person.

Disposition of
remaining es-
tate.

SEC. 17. In such order the court may, upon the consent in writing of the parties who shall have appeared, direct the delivery of any personal property, which shall not have been sold, and the assignment of any mortgages, bond, notes or other demands, not yet due, among those entitled to payment or distribution, in lieu of so much money, as such property or securities may be worth, to be ascertained by the appraisal and oath of such persons, as the court shall appoint for that purpose.

Award of court.

SEC. 18. Every person to whom such securities may be assigned, may sue and recover upon the same, at his own costs and charges, in the name of the executor or administrator making such assignment, or otherwise, in the same manner as such executor or administrator might have done.

Assignee of se-
curities may sue

SEC. 19. If upon the representation of an executor or administrator, or otherwise, it shall appear to the court that any claim exists against the estate of the deceased, which is not then due, or upon which a suit is then pending, he shall allow a sum sufficient to satisfy such claim, or the proportion to which it may be entitled, to be retained for the purpose of being applied to the payment of such claim when due, or when recovered, or of being distributed according to law. The sum so retained may be left in the hands of the executor or administrator, or may be directed by the court to be deposited in some safe bank, to be drawn only on the order of the court.

Satisfaction of
claims not due.

SEC. 20. The executor or administrator shall be allowed all necessary expenses, in the care, management and settlement of the estate; and for his services, such fees as the law provides, together with all extra expenses: *Provided*, that when the deceased shall by his will, make other provisions for compensation to his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument filed in the probate court, renounce all claims to the compensation provided by the will.

Compensation.

SEC. 21. When no such compensation shall be provided by the

Same, and com-
missioners.

will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of personal estate collected and accounted for by him, and of the proceeds of real estate sold under an order of the court for the payment of debts as follows: For the first thousand dollars at the rate of five per cent.; for all above that sum and not exceeding five thousand dollars at the rate of two and a half per cent; and for all above five thousand dollars, at the rate of one per cent; and the same commissions shall be allowed to administrators, and in all cases such further allowances may be made, as the court shall deem just and reasonable, for any extraordinary services not required by an executor or administrator in the common course of his duty.

When liable for
damages.

SEC. 22. When an executor or administrator, after being duly cited by the Probate Court, shall neglect to render his account, he shall be liable on his bond for all damages which may accrue, and his bond may be put in suit by any person interested in the estate.

Costs, how set-
tled.

SEC. 23. When costs in any case are allowed against an executor or administrator, execution shall not issue against the estate of the deceased in his hands therefor, but shall be awarded against him, as for his own debt; and the amount paid by him shall be allowed in his administration account, unless it shall appear that the suit or proceeding in which the cost shall be taxed, shall have been prosecuted or resisted without just cause.

"Court" and
"Judge," how
construed.

SEC. 24. Whenever the word "Court" is used in chapters I, II, III, IV, V, VI & X, it shall be construed to mean Probate Court, unless some other court is manifestly intended. And whenever in said chapter the word "Judge" is used it shall be construed to mean Judge of Probate, unless a judge of some other court is manifestly intended.

Approved January 26th, 1856.

CHAPTER XLVII.

OF PROBATE BONDS AND THE PROSECUTION OF THEM.

Nature of bonds.

SEC. 1. All bonds required by law to be taken in or by the order of the Probate Court, shall be for such sum and with such sureties as the court of probate shall direct, except when the law otherwise prescribes, and such bonds shall be for the security and benefit of all persons interested and shall [be] taken to the judge of probate of the proper county (without naming him) except where they are required by law to be taken to the adverse party.

Bond, how sued.

SEC. 2. A suit may be brought on the bond of any executor or administrator by any creditor in the name of the "judge of probate," when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator shall neglect to pay the same when demanded.

Same

SEC. 3. Such a suit may be brought by any person as next of kin, to recover his share of the personal estate after a decree of the Probate Court declaring the amount due to him, if the executor or administrator shall fail to pay the same when demanded.

SEC. 4. When it shall appear on the representation of any per-

son interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the court of probate may authorize any creditor, next of kin, legatee or other person aggrieved by such mal-administration, to bring an action on the bond.

Who may bring action on bond.

SEC. 5. Whenever an executor or administrator shall refuse or omit to perform any order or decree made by a court of probate having jurisdiction, for rendering an account, or upon a final settlement, or for the payment of debts, legacies, or distributive shares, such court of probate may cause the bond of such executor or administrator to be prosecuted, and the moneys collected thereon shall be applied in satisfaction of such order or decree, in the same manner as such moneys ought to have been applied by such executor or administrator.

Bond of executor, how prosecuted.

SEC. 6. In all suits upon such bonds, the writ and proceedings shall be in favor of a judge of probate of the proper county, without naming him, and when the action is brought, for the benefit of any particular person or creditor, next of kin, or legatee, it shall be stated in the process and proceedings, on the part of the plaintiff for whose benefit the suit is brought, and such person shall be deemed the real plaintiff, and shall have the control of the case.

Same

SEC. 7. On the application of any person authorized by this chapter, to commence a suit on such bond, the court of probate may grant permission to such person to prosecute the same, and the clerk shall thereupon furnish to the applicant, on his paying the legal fees, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

Court may grant permission to prosecute bond.

SEC. 8. If judgment shall be rendered for the plaintiff, in any suit upon such bond, brought for the benefit of any particular person, the court shall award execution for the amount due to such person, with costs of suit.

Execution.

SEC. 9. If judgment shall be rendered for the plaintiff in any suit upon such bond, brought by the judge of probate for any breach thereof in not performing any order or decree of the court of probate, as mentioned in the fifth section of this chapter, execution shall be awarded for the full value of all the estate of the deceased that shall have come to the hands of the executor or administrator, and for which he shall not have satisfactorily accounted, and for all such damages as shall have been occasioned by his neglect or mal-administration, with costs of suit.

Execution for neglect.

SEC. 10. All moneys received, on any execution issued on a judgment in favor of the judge of probate, as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there be any, or to such person, other than the defendant therein, as then shall be the rightful executor or administrator, and such moneys shall be assets in his hands, to be administered according to law.

Moneys how paid over.

SEC. 11. Any person who may be injured by the breach of the conditions of such bond, may afterwards from time to time sue out and prosecute a *scire-facias*, in his own name on the judgment which may have been rendered for the penalty of such bond and in such *scire-facias*, shall assign and set forth the

Scire facias.

breaches on which he relies, and may thereon recover such damages as he may prove with costs.

Breach of bond.

SEC. 12. Claim for damages on account of the breach of the conditions of any bond may be prosecuted by any executor or administrator in behalf of those he may represent, in the same manner as by persons living, and such claims may be prosecuted against the representatives of deceased persons in the same manner as other claims against such deceased persons.

Approved, January 26, 1856.

CHAPTER XLVIII.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS, IN CERTAIN CASES.

Executor may convey.

SEC. 1. When any person is bound, by a contract in writing, to convey any real estate, shall die before making the conveyance, the Probate Court may make a decree authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased persons, if living, might be compelled to execute such conveyance.

Petition.

SEC. 2. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, such court shall appoint a time and place for hearing such petition, and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least six successive weeks.

Court to give hearing.

SEC. 3. At the time and place appointed for such hearing, or at such other times as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear before the court and defend against such petition, and the court may examine on oath the petitioner and all others who may be produced before him for that purpose.

Decree.

SEC. 4. After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the court shall be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, according to the provisions of this chapter, he shall thereupon make a decree, authorizing and directing the administrator to make and execute a conveyance thereof to such petitioner.

Execution to convey.

SEC. 5. If no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in such decree, and a certified copy of the decree shall be recorded with the deed in the office of the Register of deeds of the county where the lands lie, and shall be evidence of the correctness of the proceedings and of the authority of the executor or administrator to make the conveyance.

SEC. 6. If, upon a hearing in the Probate Court, as hereinbefore provided, the court shall doubt the right of the petitioner to have a specific performance of the contract he shall dismiss the petition, without prejudice to the rights of the petitioner; who may at any time thereafter have a bill in chancery to enforce a specific performance of the contract as herein-after provided.

Court may dismiss petition.

SEC. 7. Whenever any person who is bound by a contract in writing to convey any real estate, shall die before making the conveyance, the person entitled thereto may have a bill in the court of chancery to enforce a specific performance of the contract, by his heirs, devisees, or the executor or administrator of the deceased party who made such contract.

SEC. 8. The court of chancery shall hear and determine every such case brought in said court, according to the course of proceedings in chancery, and shall make such decree therein as justice and equity shall require.

Court of Chancery may decree.

SEC. 9. If it shall appear that the complainant is entitled to have a conveyance, the court of chancery may authorize and require the executor or administrator of the deceased party to convey the estate in like manner as the deceased party might and ought to have done, if living; and if the heirs or devisees of such deceased person, or any of them, shall be within this Territory and competent to act, the said court may require them, or either of them, instead of the executor or administrator, to convey the estate in the manner before mentioned, or may require them, or either of them, to join in such conveyance with the executor or administrator.

Court may require executor to convey.

SEC. 10. Every conveyance made in pursuance of a decree of the Probate Court, or the court of chancery, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living, and then executed the conveyance.

Decree of court effectual.

SEC. 11. A copy of the decree for a conveyance, made by the Probate Court, certified by the clerk, under the seal of the Probate Court, and recorded in the registry of deeds in the county where the lands lie, or a copy of the decree of the court of chancery, for that purpose, duly certified by the register or clerk of said court, under the seal of said court, and recorded as aforesaid, shall give the person entitled to such conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Right of possession.

SEC. 12. The recording of any decree, as provided in the preceding section, shall not prevent the court of chancery, making such decree, from enforcing the same by any proper process, according to the course of proceedings therein.

Court may enforce.

SEC. 13. If the person to whom the conveyance was to be made, shall die before the commencement of proceedings according to the provisions of this chapter, or before the conveyance is completed, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of

In case of death before commencement of proceedings.

the person so entitled, may commence such proceedings, or may prosecute the same, if already commenced, and the conveyance shall thereupon be so made, as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

Approved, January 26th, 1856.

CHAPTER LI.

OF MARRIAGE.

Marriage a contract.

SEC. 1. In law marriage is considered a civil contract, to which the consent of parties capable of contracting is essential.

Age.

SEC. 2. At the time of the marriage the male must be of the age of eighteen, and the female of the age of sixteen years or upwards.

When marriages are void.

SEC. 3. Marriages are void :

1. When one party is a white person, and the other is possessed of one fourth or more of negro blood ;
2. When either party has a husband or wife living at the time of marriage ;
3. When either party is insane or an idiot at the time of the marriage ;
4. When the parties stand in the relation to each other, of parents and children, grand parents and grand children, brothers and sisters, of half as well as the whole blood, uncles and nieces, aunts and nephews, and this sub-division shall extend to illegitimate as well as to legitimate children and relatives.

License.

SEC. 4. Previous to the solemnization of any marriage in this Territory, a license for that purpose must be obtained from the judge of probate of the county wherein the marriage is to take place, and for the issue of said license he shall be entitled to one dollar.

Minors.

SEC. 5. When either party is a minor no license shall be granted without the verbal consent, if present, or written consent, if absent, of the father if living, if not, then of the mother of such minor, or of the guardian, or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness.

Judge to take testimony.

SEC. 6. When application shall be made for a license, a judge of probate shall, by the testimony of some competent witness, or of the applicant, ascertain the christian and sir-name of the parties ; their respective places of residence ; and that they are of sufficient age to be capable in law of contracting marriage ; whether there be any legal impediment to the parties entering into the marriage contract ; and he shall enter the facts so ascertained, and the day of the license, in a book to be kept by him for that purpose.

Incompetence.

SEC. 7. If on such testimony being given, it shall appear that either of the parties is legally incompetent to enter into such con-

tract, or that there is no impediment in the way, or if either party is a minor and the consent mentioned in section five shall not be given, the said judge shall refuse to grant a license.

SEC. 8. Every judge and justice of the peace, and every licensed or ordained preacher of the gospel, may perform the ceremony of marriage in this Territory. Who may marry.

SEC. 9. In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare in the presence of the magistrate or minister and the attending witnesses, that they take each other as husband and wife; and in any case there shall be at least two witnesses besides the minister or magistrate present at the ceremony. Form.

SEC. 10. Whenever a marriage shall have been solemnized pursuant to the provisions of this chapter, the minister or magistrate who solemnizes the same shall give to each of the parties on request a certificate under his hand, specifying the names, ages and places of residence of the parties married, the names and residence of at least two witnesses who were present at such marriage, and the time and place thereof. Certificate.

SEC. 11. Every person having authority to join others in marriage, shall, within three months after the solemnization of any such marriage, make and deliver to the probate judge of the county in which the marriage took place, a certificate containing particulars mentioned in the preceding section. Same.

SEC. 12. The judge of probate of each county in the Territory shall record all such returns of such marriage, in a book to be kept for that purpose, within one month after receiving the same. Record.

SEC. 13. If any justice, minister, or other person, whose duty it is to make and transmit to the judge of probate such certificate, shall neglect to make and deliver the same; or if the judge of probate shall neglect to record such certificate, or if any person shall undertake to join others in marriage knowing that he is not legally authorized so to do, or knowing of any legal impediment to the proposed marriage; or if any person authorized to solemnize any marriage shall willfully and knowingly make a false certificate of any marriage to the judge of probate; or if the said judge of probate shall willfully and knowingly make a false record of any certificate of marriage to him made, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or imprisonment for a period not exceeding one year, at the decision of the court. Penalties.

SEC. 14. No marriage solemnized before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way effected on account of any want of jurisdiction or authority in such supposed justice, or minister: *Provided*, The marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. Jurisdiction.

SEC. 15. It shall be lawful for every religious society to join together in marriage such persons as are of the said society, according to the rites and customs of such society to which they belong; the clerk or keeper of the minutes, proceedings, or other Rites and customs.

book of the religious society wherein such marriage shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the judge of probate of the county, a certificate of the marriage, and the same shall be recorded in like manner as is provided in the preceding section of this act.

Certificate and
record evidence.

SEC. 16. The original certificate and record of marriage made by the minister, officer or person, as prescribed in this chapter, and the record thereof made as prescribed, or a copy of such record duly certified by such officer, shall be received in all courts and places presumptive evidence of the fact of such marriage.

What marriages
valid.

SEC. 17. All marriages contracted with out of this Territory which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places within this Territory.

Approved January 26th, 1856.

CHAPTER XLIX.

OF THE RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS.

Power of Exec-
utors and Ad-
ministrators.

SEC. 1. Executors and administrators shall have power to maintain any proper action for the recovery of:

1. Any demand due the deceased in his lifetime.
2. Any article of personal property which belonged to the deceased in his lifetime.
3. Damages for injuring, wasting, destroying, taking, conveying away or converting to the use of the defendant, any such article before or since the death of the deceased :
or
4. Damages for any waste, injury, or trespass upon the real property of the deceased, before or since the death of the deceased.

Waste and tres-
pass.

SEC. 2. When any testator or intestate in his lifetime shall have injured, wasted or destroyed, taken, carried away or converted to his own use any article of personal property of another, or when in his lifetime he shall have committed any waste, injury or trespass upon the real property of another, the executor or administrator of the deceased shall be liable to an action therefor, and shall pay any judgment recovered therein, as he is by law directed to pay the other debts of the deceased of the same class.

Judgment when
bar.

SEC. 3. Every judgment against an heir or devisee, shall be a bar to any subsequent suit against the executor or administrator of the ancestor or deviser, for the same debt or damages, upon which such judgment shall have been obtained, unless the plaintiff shall show an execution against such heir or devisee, returned unsatisfied, or that no sufficient lands or tenements have descended or been devised, to such heir or devisee.

Subsequent suit.

SEC. 4. In all cases when a judgment shall be recorded against

an heir or devisee, for a debt or legacy expressly charged on the estate descended or devised, it shall be an absolute bar to any subsequent suit against the executor or administrator for the same debt or legacy.

May be continued.

SEC. 5. No suit that may have been commenced by any executor or administrator, who shall die, be removed or superseded or who shall become incapable of acting, shall be abated thereby, but may be continued by the co-executor or administrator, if there be any, and if there be none, by and in the name of the person who shall succeed the executor or administrator so dying, removed, superseded, or becoming incapable; in the administration of the same estate.

Judgment, how binding.

SEC. 6. If an executor or administrator be defendant in a suit pending at the time of the revocation or superseding of his power as such, the plaintiff in such suit, may proceed therein, against such executor or administrator, in order to charge him personally, but no judgment recorded therein, after such revocation or superseding, shall be binding, or be of any force against the estate of the testator or intestate, or any person succeeding to the administration of the same estate.

Court may substitute.

SEC. 7. If the plaintiff shall not elect so to proceed against such executor or administrator, the Court in which such suit may be pending, on the application of the plaintiff therein, and after reasonable notice to the person succeeding to the administration of the same estate, may by rule of Court, substitute the person so succeeding as defendant in such suit, and such suit shall thereafter proceed to final judgment in like manner as if it had been originally commenced against the person so substituted.

In case of death of executor.

SEC. 8. In case of the death of an executor or administrator during the pending of a suit against him, the Court may in like manner, substitute the person succeeding to the administration of the same estate, as defendant in such suit, with the like effect.

Writ of error.

SEC. 9. Any executor or administrator shall have power to prosecute any writ of error, or appeal taken by the deceased, or by the predecessor of such executor or administrator, and may have execution, and other legal process issued on any judgment obtained by the deceased, or by such predecessor, without recovering the same by *scire-facias*, or any other notice to the opposite party.

Probate Court.

SEC. 10. The word "Court" as used in chapters from and including thirty-seven, to forty-nine, shall be construed to mean the Probate Court, unless some other Court is manifestly intended, and the word "Judge" shall be construed to mean the Judge of Probate, unless some other Judge is manifestly intended, and the words "executor" or "administrator" shall be construed to mean either "executor" or "executrix," or "administrator" or "administratrix" according to the meaning and context.

Approved January 26th, 1856.

CHAPTER LII.

DIVORCE AND ALIMONY.

Marriages void
without decree.

SEC. 1. Marriages which are declared void by section 3, of the chapter entitled, "Of Marriages," are void without any decree of divorce.

Consent by force
or fraud.

SEC. 2. In case of a marriage solemnized when either of the parties was under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force, or fraud, and there shall have been no subsequent involuntary cohabitation of the parties, the marriage shall be deemed voidable.

Petition for di-
vorce.

SEC. 3. When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned, or referred to in the two preceding sections, either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition, or bill in the District Court of the county where the parties, or one of them reside, or in the Court of Chancery for annulling the same, and such petition, or bill shall be filed, and proceedings shall be had thereon, as in the case of a petition or bill filed in said Court for a divorce; and upon due proof thereof, it shall be declared void by a decree or sentence of nullity.

Marriage, how
declared valid.

SEC. 4. When the validity of any marriage shall be denied, or doubted, by either of the parties, the other party may file a bill or petition in the manner aforesaid for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a decree, or sentence of the Court, and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned.

Marriage may
be dissolved
without decree.

SEC. 5. When either party shall [be] sentenced to imprisonment for life, the marriage thereby shall be absolutely dissolved, without any decree of divorce, or other legal process, and no pardon granted to the party so sentenced, shall restore such party to his or her conjugal rights.

Divorce, how
decreed.

SEC. 6. A divorce from the bonds of matrimony may be decreed by the District Court of the county where the parties, or one of them reside, on the application by petition or bill of the aggrieved party in either of the following cases:

1. Whenever adultery has been committed by any husband or wife.
2. When one of the parties was physically incompetent at the time of the marriage.
3. When one of the parties has been sentenced to imprisonment in any prison, jail or house of correction for three years or more, and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights:
4. Where either party shall willfully abandon the other, without good cause, for the term of two years:
5. When the husband or wife shall have become an habitual drunkard.

SEC. 7. A divorce from the bonds of matrimony or from bed and board, may be decreed for the cause of extreme cruelty, whether practiced by using personal violence, or by any other means; or for utter desertion of either party for the term of two years; and a like divorce may be decreed, on complaint of the wife, when the husband, being of sufficient ability to provide a suitable maintenance for her, shall grossly or wantonly and cruelly refuse or neglect so to do.

Causes for
granting di-
vorce.

SEC. 8. No divorce shall be granted unless the complainant shall have resided in this Territory for six months immediately preceding the time of filing the complaint, or unless the marriage was solemnized in this Territory from the time of the marriage, to the time of filing the complaint.

Residence.

SEC. 9. No divorce shall be decreed in any case when it shall appear that the petition or bill therefor, was founded in, or exhibited by collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

Collusion or
crime.

SEC. 10. A petition or bill for a divorce may be exhibited by a wife in her own name, as well as a husband; and in all cases the respondent may answer such bill without oath.

Petition and bill

SEC. 11. Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity; and the Court shall have the power to award issues, to decree costs, and enforce its decrees as in other cases.

Suit, how
conducted.

SEC. 12. In every suit brought either for a divorce, or for a separation, the Court may in its discretion, require the husband to pay any sum necessary to enable the wife to carry on or defend the suit during its pendency; and it may decree costs against either party, and award execution for the same; or it may direct such costs to be paid out of any property sequestered, or in the power of the Court, or in the hands of a receiver.

Costs of suit,
how paid.

SEC. 13. [After] The exhibiting of the petition or bill in a suit to annul a marriage, or for a divorce, whether from the bond of matrimony, or from bed and board, the Court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint upon her personal liberty during the pendency of the Court.

Restraint.

SEC. 14. The Court may in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such suit, as shall be deemed proper and necessary; and for the benefit of the children.

Maintenance of
minor children.

SEC. 15. Upon pronouncing a sentence or decree of nullity of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, the Court may make such further decree as it shall deem just and proper, concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children, or any of them, shall remain.

With whom mi-
nor children
may remain.

SEC. 16. The Court may from time to time, afterwards, on the petition of either of the parents, revise and alter such decree, concerning the care, custody and maintenance of the children, or

Court may alter
decree.

any of them, and make a new decree concerning the same, as the circumstances of the parents, and the benefit of the children shall require.

Possession of
real estate.

SEC. 17. Whenever the nullity of a marriage or a divorce from the bonds of matrimony, for any cause, excepting that of adultery committed by the wife, shall be decreed; and when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband were dead.

Court may
make further
decree.

SEC. 18. Upon every such dissolution of a marriage, as is specified in the preceding section, and also upon every divorce from bed and board, the Court may make a further decree for restoring to the wife, the whole or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband, by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

Court may ap-
point trustees.

SEC. 19. Upon every divorce for adultery committed by the husband, and upon every divorce from bed and board for any cause, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the Court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the Court, upon trust, to invest the same, and to apply the income thereof to the support and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the Court shall direct.

Trustees to give
bonds.

SEC. 20. Such trustees shall also pay over the principal sum to the wife and children of the marriage, when ordered by the Court, in such proportions, and at such times as the Court shall direct, regard being had in the disposition of the said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustees shall give such bonds as the Court shall require, for the faithful performance of their trust.

Husband may
be examined on
oath.

SEC. 21. Whenever the Court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance of the foregoing provisions, such Court may require the husband to disclose on oath, what personal estate has come to him, by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

Decree for sup-
port of wife and
children.

SEC. 22. Upon every divorce from the bonds of matrimony for any cause excepting that of adultery, committed by the wife, and also upon every divorce from bed and board from any cause, if the estate and effects restored or awarded to the wife, shall be insufficient for the suitable support and maintenance of herself and such children of the marriage, as shall be committed to her care and custody, the Court may further decree to her such part of the personal estate of the husband, and such alimony out of his estate, as it shall deem just and reasonable, having regard to the ability of the husband, and the character and situation of the parties, and all other circumstances of the case.

SEC. 23. When the marriage shall be dissolved by the husband being sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of adultery, committed by the husband, or misconduct or drunkenness of the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands in the same manner as if he were dead ; but she shall not be entitled to dower in any other case of divorce.

Wife, when entitled to dower.

SEC. 24. When a divorce shall be decreed for the cause of adultery committed by the wife, the husband shall hold her personal estate forever, and he shall also hold her real estate, so long as they shall both live ; and if he shall survive her, he shall hold her real estate for his own life, as tenant by curtesy.

When husband may hold real and personal estate.

SEC. 25. In the case last mentioned, the Court may, by the decree, allow the wife for her subsistence, as much of her said personal or real estate, or of the income thereof, as such Court shall judge necessary.

Court may allow wife subsistence

SEC. 26. In all cases where alimony or other allowance shall be decreed for the wife or children, the Court may require sufficient security to be given by the husband for the payment thereof according to the terms of the decree ; and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the Court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate, to be applied to the payment thereof.

Security required to pay alimony.

SEC. 27. After a decree for alimony or other allowance, for the wife and children or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children as before provided, the Court may from time to time, on the petition of either of the parties, revise and alter such decree respecting the amount of such alimony or allowance, or the payment thereof ; and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters, which such Court might have made in the original suit.

Court may alter and revise decree.

SEC. 28. A divorce for the cause of adultery committed by the wife, shall not effect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the Court upon the proofs in the case, and in every case the legitimacy of all children begotten before the commencement of the suit, shall be presumed until the contrary be shown

Legitimacy of children.

SEC. 29. Upon the dissolution of a marriage on account of the nonage, insanity, or idiocy of either party, the issue of the marriage shall be deemed to be, in all respects, the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

Same.

SEC. 30. When a marriage is dissolved on account of a prior marriage of either, and it shall appear that the second marriage [was contracted in good faith and with the full belief of the parties that the former wife or husband] was dead, that fact shall be

Prior marriage.

stated in the decree of divorce or nullity, and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be legitimate issue of the parent, who at the time of the marriage, was capable of contracting.

Consanguinity.

SEC. 31. Upon the dissolution, by decree or sentence, of nullity of any marriage that is prohibited on account of consanguinity between the parties, or of any marriage between a white person and a negro, the issue of the marriage shall be deemed to be illegitimate.

Penalties.

SEC. 32. If any persons, after being divorced from the bond of matrimony, for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

Marriage, how annulled.

SEC. 33. A bill to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor, but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had obtained the age of consent, had freely cohabited as man and wife.

Same

SEC. 34. A bill to annul a marriage on the ground of insanity or idiocy may be exhibited by any person admitted by the Court to prosecute as the next friend to such idiot or lunatic.

Lunatic.

SEC. 35. The marriage of a lunatic may also be declared void upon the application of the lunatic, after the restoration of reason, but in such case no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabit as husband and wife, after the lunatic was restored to a second mind.

Force or fraud.

SEC. 36. If there shall be any issue of a marriage annulled on the ground of force or fraud, the Court shall decree their custody to the innocent person, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

Physical incapacity.

SEC. 37. A suit to annul a marriage on the ground of the physical incapacity of one of the parties, shall only be maintained by the injured party against the party whose incapacity is alleged, and shall, in all cases, be brought within two years from the solemnization of the marriage.

Confession and admission.

SEC. 38. No decree of divorce and of the nullity of a marriage shall be made solely on the declarations, confessions, or admissions of the parties, but the Court shall, in all cases, require other satisfactory evidence of the facts alleged in the bill for that purpose.

In what cases, Court may deny divorce.

SEC. 39. In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the Court may deny a divorce in the following cases:

1. When the offence shall appear to have been committed by the procurement, or with the connivance of, the complainant.
2. When the offence charged shall have been forgiven by the injured party, and such forgiveness be proved by ex-

press proof, or by the voluntary cohabitation of the parties with the knowledge of the offence.

3. When there shall have been no express forgiveness and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offence charged.

SEC. 40. In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the Court may make such order or decree for the support and maintenance of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

Order for maintenance.

SEC. 41. When a decree of divorce from bed and board forever, or a limited time, shall have been pronounced, it may be revoked at any time thereafter, under such regulation and restorations as the Court may impose upon the joint applications of the parties, and their producing satisfactory evidence of their reconciliation.

Residence.

SEC. 42. If any married woman, at the time of exhibiting a bill against her husband, under the provisions of either of the last two articles, shall reside in this Territory, she shall be deemed an inhabitant thereof, although her husband may reside elsewhere.

Approved January 26, 1856.

CHAPTER LIII.

OF GUARDIANS AND WARDS.

SEC. 1. All male children under twenty-one, and all females under eighteen years of age, are declared to be minors; but in case a female marries between the age of sixteen and eighteen, her minority ends.

Who are minors

SEC. 2. The court of probate in each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others, being inhabitants or residents in the same county, and also to such as shall reside without the Territory and have any estate within the same.

Guardians, how appointed.

SEC. 3. If the minor is under the age of fourteen years, the court of probate may appoint his guardian, and if he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the court, shall be appointed accordingly.

When minor is under the age of fourteen.

SEC. 4. If the guardian nominated by such minor shall not be approved by the court, or if the minor shall reside out of the territory, or if, after being cited by the court, he shall neglect to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

In case such guardian is not approved by the court, or the minor neglects to nominate.

SEC. 5. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the court, his nomination of a guardian may be certified to the court of probate by a justice of the peace, which shall have the same effect as if made in the presence of the court.

If minor resides more than ten miles from place of holding court, his nomination may be certified by a justice.

When parents may be guardians.

SEC. 6. The father of the minor, if living, and in case of his decease, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the custody of the person of the minor, and to the care of his education.

If minor is an orphan, the guardian shall have the custody &c., of ward.

SEC. 7. If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

Guardian shall have care of minor's estate until his majority.

SEC. 8. Every guardian, appointed as aforesaid, shall have the care and management of the estate of the minor, and shall continue in office until such minor shall arrive at the age of twenty-one, if a male, or eighteen years, if a female, or until the guardian shall be discharged according to law.

Bond of guardian.

SEC. 9. Every such guardian shall give bond with surety or sureties to the Judge of Probate in such sum as the court shall order, with condition as follows:

To make an inventory.

1st. To make a true inventory of all the real and personal estate of the ward that shall come to his possession or knowledge, and to return the same into the court at such time as the law directs.

Faithfully to discharge his trust.

2d. To dispose of and manage all such estate and effects according to law, and for the best interests of the ward, and faithfully to discharge his trust as such guardian.

To render an account of property in his possession.

3d. To render an account on oath of the property in his hands including the proceeds of all the real estate which may be sold by him, and of the management and disposition of such property, within one year after his appointment, and at such other times as the court shall direct; and,

To settle his accounts with the court, and deliver property to person entitled thereto.

4th. At the expiration of his trust, to settle his accounts, with the court, or with the ward, or his legal representatives, and to pay over and deliver all the estate and effects remaining in his hands, or due from him, on such settlement to the person or persons who shall be lawfully entitled thereto.

Minor with sufficient property, shall defray expenses from his own estate.

SEC. 10. If any minor, who has a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than such father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable, and shall be directed by the court, and the charges therefor may be allowed accordingly in the settlement of the accounts of such guardian.

Guardian may be appointed by will.

SEC. 11. Every father may, by his last will, in writing, appoint a guardian or guardianess for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for any less time, and every such testamentary guardian shall have the same powers and shall perform the same duties with regard to the person and estate of the ward as a guardian appointed by the court.

SEC. 12. Every such testamentary guardian shall give bond

in like manner and with like condition as is herein-before required of a guardian appointed by the court: *Provided*, that when the testator, in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required unless from a change in the situation or circumstances of the guardian, or for other sufficient cause the court shall think proper to require it.

When, shall give bond.

SEC. 13. Nothing contained in this chapter shall impair or affect the power of any court to appoint guardians to defend the interests of minors, impleaded in such court, or interested in any matter then pending, nor their power to appoint or allow any person as next friend for a minor to commence, prosecute or defend any suit in his behalf.

Power of court to appoint guardians, shall not be impaired.

SEC. 14. When the relation or friends of any insane person, or of any person who, by reason of extreme old age, or other cause, is mentally incompetent to have the charge and management of his property, shall apply to the court of probate to have a guardian appointed for him, the court shall cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the cause not less than fourteen days before the time so appointed.

When court shall appoint.

Notice.

SEC. 15. If, after a full hearing and examination, upon any such application, it shall appear to the court that the person in question is incapable of taking care of himself and managing his property, it shall appoint a guardian of his person and estate, with the powers and duties herein-after specified.

Guardian when to be appointed.

SEC. 16. Every guardian so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward and the management of all his estate until such guardian shall be legally discharged, and he shall give bond to the judge of probate in like manner and with the like conditions as is before prescribed with respect to the guardian of the minor.

Duties.

Bond.

SEC. 17. When any person, by excessive drinking, or by gaming, idleness or debauchery of any kind, shall so spend, waste or lessen his estate as to expose himself or family to danger of want or suffering, or the county to charge or expense, for the support of himself or family, any officer having charge of the poor of the county, or justice of the peace of the county of which such spendthrift is an inhabitant, or in which he resides, may present a complaint to the court of probate, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him.

When guardian may be appointed for spendthrift.

SEC. 18. The court shall cause notice to be given to such supposed spendthrift of the time and place of hearing the case, not less than ten days before the time so appointed, and if, after a full hearing, it shall appear to the court that the person complained of comes within the provision contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties herein-after specified.

Notice.

SEC. 19. After the order for notice has been issued, the complainant may cause a copy of the complaint, with the order for such notice, to be filed in the office of the Register of deeds, of the county, and a minute thereof to be entered on the lien book

Copy of complaint shall be recorded.

- Contracts void.** in said office ; and if a guardian shall be appointed on such application, all contracts, except for necessities at reasonable prices, and all gifts, sales, and transfers of real or personal estate, made by such spendthrift, after the filing of a copy of such complaint and order, as aforesaid, and before the termination of the guardianship, shall be utterly void.
- Allowance to ward.** SEC. 20. When a guardian shall be appointed for an insane person, or a spendthrift, the court shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward, in defending himself against the complaint.
- Powers and duties of guardians.** SEC. 21. Every guardian appointed for a spendthrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged, and he shall give bond to the judge of probate, in like manner and with like condition, as is hereinbefore directed with respect to the guardian of an insane person.
- Bond.**
- How debts shall be paid.** SEC. 22. Every guardian appointed under the provisions of this chapter, whether for a minor or for any other person, shall pay all just debts due from the ward out of his personal estate, and the income of his real estate if sufficient ; or, if not, then out of his real estate, upon obtaining license for the sale thereof, and disposing of the same in the manner provided by law.
- Duties of guardian.** SEC. 23. Every such guardian shall also settle all accounts of the ward, and demand, sue for, and receive all debts due him, or may with the approbation of the court, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects, and he shall appear for and represent his ward, in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.
- Management of ward's estate.** SEC. 24. Every guardian shall manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary for the comfortable and suitable maintenance and support of the ward, and his family, if there be any, and if such income and profits shall be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary for the maintenance and support of the ward, and his family, if there be any.
- Maintenance.**
- Partition and assignment of dower.** SEC. 25. The guardian may join in, and assent to a partition of the real estate of the ward, in the cases and in the manner provided by law, and he may also assign and set out dower in the said estate, to any widow entitled thereto.
- Oath.** SEC. 26. Every guardian appointed by virtue of this chapter, shall before entering upon his duties, take and subscribe an oath that he will faithfully perform the duties of guardian to such ward, which oath shall be endorsed upon the inventory, and shall within three months after his appointment make out a true and perfect inventory of all the property of the ward, in this Territory, which shall come to his knowledge or possession, and shall within that time, cause the same to be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of the estate of a deceased person, and every
- Inventory.**
- Appraisement.**

guardian shall account for and dispose of the estate of the ward, in like manner as is directed, with respect to executors or administrators.

SEC. 27. The Courts of Probate in their respective counties on the application of a guardian or of any person interested in the estate of any ward, after such notice to all persons interested therein as the court shall direct, may authorize or require the guardian to sell and transfer any stock in public funds, or in any bank or other corporation, or any other personal estate or effects held by him as guardian, and to invest the proceeds of each sale, and also any other moneys, in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein, and the said court may make such further orders, and give such directions, as the case may require, for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Power of guardian to sell personal estate.

SEC. 28. When any guardian appointed, either by testator or Court of Probate, shall become insane, or otherwise incapable of discharging his trust or evidently unsuitable therefor, the court after notice to such guardian and all others interested, may remove him, and every guardian may upon his request be allowed to resign his trust when it shall appear to the court proper to allow the same, and upon every such resignation or removal, and upon the death of any guardian, the court may appoint another in his place.

When guardians may be removed

Court may appoint.

SEC. 29. If any guardian having the care and custody of such minor shall neglect to well feed and clothe him, or her, or in any way maltreat and abuse him or her, he shall upon conviction thereof be fined not exceeding one hundred dollars, or imprisoned in the county jail, not exceeding sixty days, or both at the discretion of the court.

Neglect of duty.

SEC. 30. Suit may be commenced by any one against such person who shall have such minor in charge, by filing an information with the probate judge, or a justice of the peace in the county where said guardian resides, and the said judge of probate or justice of the peace shall issue a warrant directed to the sheriff or constable who shall arrest and bring said guardian forthwith before him to answer such charge.

How suit may be commenced.

SEC. 31. If upon testimony it shall appear to the satisfaction of the judge of probate that the person having in charge such minor, is unfit for the trust, and that the condition of such minor would be ameliorated by the removal of such guardian, then said judge shall remove him and appoint some other person to act as guardian.

Removal and appointment

SEC. 32. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within four years from the time when the guardian shall have been discharged: *Provided*, That if at the time of such discharge the person entitled to bring such action shall be out of the Territory, or under any legal disability to sue, the action may be commenced at any time within four years after the return of such person to the Territory, or before such disability shall be removed.

Limitation of actions on guardians bond.

SEC. 33. Upon complaint made to the court by any guardian

Embezzlement
of wards prop-
erty punished.

or by the ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person as having concealed, embezzled or conveyed away any of the money, goods or effects, or any instrument in writing belonging to the ward, the court may cite and examine such suspected person, and proceed with him as to such charge, in the same manner, as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Non-resident
minor.

SEC. 34. When any minor, or other person liable to be put under guardianship, according to the provisions of this chapter shall reside without this Territory and shall have any estate therein, any friend of such person, or any one interested in his estate, in expectancy, or otherwise, may apply to the court of probate of any county in which there may be any estate of such absent person; and after notice given to all persons interested, in such manner as the court shall order, and after a full hearing and examination of, it shall appear to him proper, it may appoint a guardian for such absent person.

Powers of guar-
dian of a non-
resident.

SEC. 35. Every guardian appointed according to the provisions of the preceding section, shall have the same powers, and perform the same duties, with respect to any estate of the ward, that shall be found within this Territory, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed by virtue of this chapter.

Bond.

SEC. 36. Every such guardian shall give bond, to the judge of probate, in like manner, and with like condition, as is herein before prescribed, with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects, as shall come to his hands in this Territory.

Priority of ap-
pointment.

SEC. 37. The guardianship which shall be first lawfully granted of any person residing without the Territory shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court in every other county.

Compensation
of guardian.

SEC. 38. Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he shall also have such compensation for his services, as the court in which his accounts are settled, shall deem to be just and reasonable.

Accounts of
joint guardians.

SEC. 39. When an account is rendered by two or more joint guardians, the court may in its discretion allow the same upon the oath of any one of them.

GENERAL PROVISIONS.

Who are spend-
thrifts.

SEC. 40. The word spendthrift in all its provisions relating to guardians and wards, contained in this or any other statute, is intended to include every person who is liable to be put under guardianship, on account of excessive drinking, gaming, idleness, or debauchery.

SEC. 41. Whenever in this chapter the word "court" is used, it shall be construed to mean Probate Court, unless some other court is manifestly meant. Meaning of "Court."

SEC. 42. A minor is bound not only by contract for necessities, but also by his other contracts, unless he disaffirms them, within a reasonable time after he attains his majority, and restores to the other party all money or property received by virtue of the contract, and remaining within the control of the ward, at any time after attaining his majority. Contracts of minor, when binding.

SEC. 43. No contract can be thus disaffirmed, in cases where an account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reason to believe the minor capable of contracting. When contracts, not voidable.

SEC. 44. When a contract for the personal services of a minor has been made with him alone, and those services are afterwards performed, payment made therefor to such minor, in accordance with the terms of the contract, is a full satisfaction for those services, and the parent or guardian cannot recover therefor. Payment to minor for services, sufficient.

Approved January 26th, 1856.

PART SECOND.

GENERAL LAWS.

ACTS OF INCORPORATION, &c., &c.

AN ACT

Regulating Fees and Salaries.

Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That the Fees and Salaries named in this chapter shall be paid to the different officers as herein provided :

TERRITORIAL OFFICERS.

The salary of the Territorial Treasurer shall be one hundred and fifty dollars annually.

That of the Territorial Auditor two hundred dollars annually.

That of the Librarian shall be one hundred dollars annually.

That of the Superintendent of Public Instruction shall be two hundred dollars annually.

COUNTY OFFICERS.

The Superintendent of Common Schools shall receive in full compensation for his services (two dollars and fifty cents for each quarter quarter section of land he may sell,) and two dollars for each day he may be employed in the performance of his duty.

The County Treasurer shall be allowed a salary of fifty dollars annually, and a commission of five cents on every dollar collected and paid out by him, and fifteen cents for each mile travel in going to and returning from the Seat of Government, to pay over to the Territorial Treasurer the Territorial funds collected by him.

CLERK'S FEES IN CRIMINAL CASES.

For filing each indictment,	\$ 50
Issuing each capias,	1 00
For each trial upon an indictment not sustained,	2 00
For each trial of a cause to judgment,	5 00
For swearing a grand jury,	50
For issuing venire for grand jury,	1 00
For each subpoena containing but one name,	50
For each additional name,	10
For filing each paper,	10
For entering each order,	25
For entering each continuance,	25
For entering each judgment,	1 00

In appeals in criminal cases no fees shall be taxed against the Territory or County, unless the decision of the Court below be reversed, then the clerk shall be entitled to receive fifteen cents per hundred words in the transcript.

COUNTY CLERK'S FEES.

The Clerks of the county shall receive the following fees to be paid by the county :

For each order of the county commissioners,	\$ 25
For each subpoena,	50
For each copy of record furnished, per hundred words,	15
For making out tax list, per hundred words or figures,	15
For making out poll books for each precinct at each election,	1 00
For making out certificates of appointment by order of the county commissioners,	50
For recording description of estrays,	50
For writing advertisement of estrays for printer,	50
For each certificate of election,	50
For canvassing election returns,	2 00
For taking and filing each bond,	1 00

ASSESSORS.

The County Assessor shall be allowed in full for his compensation fifteen cents for each name listed on the assessment rolls of his county, one half to be paid out of the county revenue, and one half out of the Territorial funds.

CLERK'S FEES.

The fees of the several Clerks shall be as follows :

For each certificate with seal,	\$ 50
For each certificate, without seal,	40
For each abstract or copy per hundred words,	15
For filing each appeal,	3 00
For each continuance,	1 00
For each judgment,	2 00
For issuing execution,	1 00
For entering satisfaction of judgment,	50
For entering each rule or order,	25

For entering each attachment,	-	-	-	-	-	2 00
For entering cause submitted without action,	-	-	-	-	-	2 50
For issuing each writ,	-	-	-	-	-	1 00
For issuing each summons for one person,	-	-	-	-	-	50
For each additional person in the summons,	-	-	-	-	-	10
For swearing each witness,	-	-	-	-	-	10
For swearing each jury,	-	-	-	-	-	25
For taking the acknowledgment of each deed or power of attorney,	-	-	-	-	-	50

SHERIFF'S FEES.

Sheriffs shall be allowed the following fees :

For serving any writ or paper,	-	-	-	-	-	\$ 50
For each copy furnished, per hundred words,	-	-	-	-	-	15
For serving writ with posse comitatus,	-	-	-	-	-	2 50
For each commitment,	-	-	-	-	-	25
For each discharge from prison,	-	-	-	-	-	25
For attending with prisoner at court per day,	-	-	-	-	-	1 00
For calling each jury,	-	-	-	-	-	10
For summoning each jury for District Court,	-	-	-	-	-	8 00
For traveling fees per mile,	-	-	-	-	-	5
For selling property under execution, per day,	-	-	-	-	-	1 00
For making a Sheriff's deed,	-	-	-	-	-	1 00
For summoning a jury in a justices' court,	-	-	-	-	-	1 50
For serving each execution,	-	-	-	-	-	2 00
For serving attachment,	-	-	-	-	-	1 00
For collecting and paying over money, three per cent. on the first two hundred dollars, two per cent. on the next three hundred dollars, and one per cent. on over five hundred dollars.						
For boarding a prisoner per day,	-	-	-	-	-	50

CORONER'S FEES.

Coroners shall be allowed the following fees :

For each view of a dead body,	-	-	-	-	-	\$5 00
For each subpoena on paper served (to be paid by the estate of such deceased person if not insolvent, if so by the county,)						25
For any other services the same fees as the Sheriff.						

CONSTABLE'S FEES.

Each Constable shall be allowed to receive the following fees :

For serving each writ or paper,		\$ 50
For traveling fees per mile,		5
For advertising property for sale,		50
For returning each paper not served,		10
For posting up each notice,		25
For collecting money, with or without suit, five per cent.		
For summoning a jury in a justice's court,		1 50
For calling a jury,		25

In criminal cases, same fees as Sheriff.

COUNTY COMMISSIONERS' FEES.

The County Commissioners shall each be allowed three dollars per day for each day necessarily employed in their respective duties as such.

DISTRICT ATTORNEYS.

District Attorneys shall be allowed the following fees:

For preparing each Indictment, ...	\$ 5 00
For conducting each case of misdemeanor, ...	10 00
For conducting each case of felony, ...	20 00
For conducting each capital case, ...	50 00
For attendance at court, per day, ...	5 00
For traveling fees, per mile, ...	15
And shall be entitled to an additional salary of	300 00

JURORS.

Jurors shall be allowed the following fees:

Both grand and petit jurors at the District Court shall receive, per day, \$	2 00
For traveling fees, per mile, ...	10
Jurors in a Justice's Court, per day, ...	1 00
For traveling fees, per mile, ...	10

WITNESSES.

Witnesses shall be allowed the following fees:

For each day's attendance before any court, commissioners, referees, or any body having power to compel the attendance of witnesses, \$	1 50
For traveling fees, per mile, ...	10

JUSTICES OF THE PEACE.

Justices of the Peace shall be allowed the following fees:

For administering each oath, ...	\$ 10
For each subpoena, ...	25
For each summons, ...	25
For issuing attachment, ...	50
For entering judgment, ...	50
For issuing each execution, ...	50
For making certified copies of appeals, per 100 words, ...	15
For issuing venire for jury, ...	25
For taking acknowledgment of a deed, ...	50
For performing a marriage ceremony, ...	3 00
For taking deposition, per 100 words, ...	15
For issuing writ in forcible entry and detainer, ...	1 00
For writ of restitution, ...	50
For appointing appraisers of estrays, ...	25
For certified copies of estrays, ...	25
For each warrant, ...	50
For swearing a jury, ...	25
For taking recognizance, ...	50

JUDGE OF PROBATE.

The Judge of Probate shall be allowed to receive the following fees :

For granting letters of administration, ...	\$ 1 00
For appointing a guardian when not contested, ...	1 00
For appointing a guardian when contested, ...	2 00
For entering an order for settlement of claims, ...	1 00
For entering an order for the partition of real estate, ...	1 00
For entering an order of distribution, ...	1 00
For appointing appraisers of estates, ...	50
For granting each appeal, ...	50
For approving each bond, ...	25
For preparing letters of administration, ...	50
For administering each oath, ...	10
For furnishing copies of records, per 100 words, ...	15
For each certificate and seal, ...	50
For filing each paper, ...	10
For each judgment, ...	1 00
For other services, the same fees as Justices of the Peace and an annual salary of	50 00

REGISTER OF DEEDS.

Registers of Deeds shall be allowed to receive the following fees :

For recording each deed, not over 100 words, ...	\$ 1 00
For all additional words, per hundred, ...	10
For each copy, per 100 words, ...	15
For recording powers of attorney, not over 100 words, ...	1 00
For all additional words, per hundred, ...	10
For recording mechanics' liens, ...	25
For recording any paper not enumerated, per 100 words, ...	50
For recording marks and brands, ...	25
For an examination of the records, ...	25

Any officers who may have performed any services heretofore, for which no compensation was provided by law, shall be entitled to receive the same compensation for said services, as is provided in this act for like cases.

Approved January 26, 1856.

AN ACT

Amendatory of an Act, entitled "An Act to incorporate Bellevue."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the qualified electors of said city, shall, on the first Monday of June (A.D., 1856,) eighteen hundred and fifty-six, and annually on the same day thereafter, elect a Mayor and three Aldermen, a Recorder, Assessor, Treasurer and Marshal.

SEC. 2. That all that Territory known as the Mission Reserve, and laid off and platted as a town site, is hereby declared to be included within the geographical limits of said city of Bellevue.

SEC. 3. That all parts of the act to which this is amendatory inconsistent with the provisions hereof, are hereby repealed.

SEC. 4. This act shall be in force from and after its passage.

Approved Jan. 26, 1856.

AN ACT

To organize the Nebraska Volunteers

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That there shall be formed an Independent Volunteer Military organization, to be known and styled as the Nebraska Volunteers.

SEC. 2. The Territory of Nebraska shall constitute one division; said division shall consist of two brigades. All that portion of the Territory lying north of the Platte River shall constitute the *first* brigade, and all that portion of the Territory lying south of the Platte River shall constitute the *second* brigade.

SEC. 3. Regiments and battalions may be formed in each brigade according—as in the opinion of the commanding officers of the brigade and division—the increase of the population and the wants of the service may require. The number in each regiment, including officers and men, shall not exceed one thousand.

SEC. 4. Companies may be formed by the voluntary enrollment of individuals; and no company shall exceed sixty-four, including officers and men; and each company may determine to which branch of the service it shall belong—whether infantry, cavalry, artillery, or rifles.

SEC. 5. The officers shall be as follows :—The Governor shall be the commander-in-chief of all the forces of the Territory. There shall be one major-general in command of the division; one brigadier-general in command of each brigade; and one brigade inspector attached to each brigade.

The regimental officers shall consist of a colonel, Lt.-colonel, major, adjutant, surgeon, quartermaster and commissary.

The company officers shall consist of a captain, 1st lieutenant, 2d. lieutenant, and one orderly sergeant, and one corporal.

SEC. 6. The officers shall be elected as follows: the major-general and two brigadier-generals shall at the first election, be chosen by the two Houses of the General Assembly in joint convention; but any vacancy occurring in those offices thereafter, the same shall be filled by election by the commissioned officers of each brigade and regiment, and all other brigade and regimental officers shall be elected by the commissioned officers of each brigade and regiment.

Each company shall elect its own officers. All officers shall be commissioned by the Governor.

SEC. 7. Each company shall meet three times in each year, viz: on the first Tuesday of April, May, and June, for exercise in the drill and military evolutions, and at such time and place in the autumn of each year as the major-general shall designate.

There shall be an encampment of three days' duration of each brigade, for the purpose of drill, inspection, and review.

SEC. 8. It shall be the duty of the commanding officer of each regiment to report to the major-general on or before the first of May and the first of Oc-

tober of each year, the condition and strength of each company belonging to his command; and the major-general shall report the same to the Governor and commander-in-chief.

SEC. 9. Each company shall be supplied with arms from the quota of arms belonging to the Territory.

SEC. 10. All companies heretofore organized, and whose officers are commissioned, shall be considered as enrolled under this act.

SEC. 11. The organization provided for in this act, shall in all respects be subordinate to the civil authority. The troops enrolled under it, shall obey such orders as they may receive from the Governor and commander-in-chief, and from their superior officers.

SEC. 12. And the Governor is hereby authorized to order into active service such forces as he shall deem proper, whenever in his judgment it shall be necessary, in order to protect the lives and property of the people of the Territory, and to preserve the public peace.

But in no case shall the Governor exercise the authority herein conferred upon him, until it shall appear that the lives and property of the people and the public peace cannot be preserved without the aid of the military force.

SEC. 13. This act shall take effect from and after its passage.

Approved January 23, 1856.

AN ACT

To amend an act entitled "An Act to incorporate the Simpson University" at Omaha City, Nebraska Territory—Approved March 9th, A. D. 1855.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That William H. Goode, Isaac F. Collins, W. D. Gage, H. Burch, J. W. Taylor, Moses F. Shinn, George Jennings, Benj. R. Folsom, Thomas H. Benton, Jr., W. N. Byers, Nelson Amsbury, W. S. Daily, Wm. Larimer, Jr., Jesse Lowe, and J. E. Rogers, with their successors, be, and they are hereby created a body politic and corporate, to be styled Trustees of the Simpson University at Omaha City, Nebraska Territory, (or State,) and by that title to remain in perpetual succession, with full power to sue and be sued, to plead and be impleaded, to receive, acquire, hold, possess, and convey property, real, personal, or mixed, to use, employ, manage, and dispose of all such property, and money belonging to said corporation, in such manner as shall seem to the trustees best adapted to promote the prosperity and success of the University with its several departments; to have and use a common seal, and to alter the same at pleasure; to make such by-laws for its regulations as they shall deem fit: *Provided* they do not conflict with the constitution and laws of the United States, or of the Territory, (or State) of Nebraska; and to confer on those whom they may deem worthy, all such degrees of merit and honor as are usually conferred by Colleges and Universities.

SEC. 2. For the present, the aforesaid individuals shall constitute the Board of Trustees for said Institution.

SEC. 3. The officers of the Trustees shall be a President, Treasurer, and Secretary. The Treasurer, before entering upon the duties of his office, shall give bond in such penal sums, and with such securities as shall be approved by the trustees.

SEC. 4. That the Nebraska District or Districts and the Council Bluffs

District of the Iowa Annual Conference of the Methodist Episcopal Church, and when there shall be formed an annual conference or conferences in the Territory (or State) of Nebraska, and western portion of the State of Iowa, pledging their patronage to said institution, the said districts or conferences shall alternately fill all vacancies occurring in the board of trustees, beginning with the Nebraska District or Conference; and the said districts or conferences shall annually appoint any number of visitors from their own body respectively, not exceeding *three* for each district or conference, who shall attend the meetings of the board of trustees, and shall with said trustees constitute a joint board, in the appointments and removals of all officers of the said University.

SEC. 5. That the joint board shall have full power to appoint, in such a manner as they may deem expedient, a President of the University, together with such professors and instructors as may at any time be necessary to form an efficient Faculty, for the instruction of students in the arts and sciences, and the learned professions, as taught in the best universities in our country; and the said joint board shall, from time to time, prescribe and regulate the course of studies to be pursued in said institution, and in the preparatory and other departments attached thereto; to fix the rate of tuition, room-rent and college expenses; to appoint such other officers and agents as may be necessary in managing the business of the institution, (under such bonds and penal sums as the trustees may require) to define their powers, duties, and employments; to fix their compensations; to displace, and remove either the President, Professors, officers, or agents, as said joint board shall deem to the interest of said institution; to locate and erect suitable buildings; to purchase text-books and library, and chemical and philosophical apparatus, and other suitable means of instruction.

SEC. 6. That the said joint board shall have power and authority to organize, in addition to the library department of the arts and sciences, any, or all of the departments of Theology, Medicine, Law, and Agriculture, at any time when in the judgment of said joint board, the interests of the institution and the public wants require it; and that the said Theological, Medical, Law, and Agricultural departments, or any one of them, may be managed or controlled by a separate board of directors, whom the said joint board shall have power to appoint and provide, and the property, assets, and liabilities of each be, and remain distinct from the property, assets, and liabilities of the library and scientific departments, and of each other.

SEC. 7. The University aforesaid shall be styled the Simpson University, to be located at, or near, Omaha City, Nebraska Territory.

SEC. 8. The trustees of said institution shall not exceed *fifteen*, exclusive of the President, or presiding officers of the University, who shall be *ex-officio* a member of the board of trustees. The trustees may hold their office for the term of *four years*; to be so classified as to admit of an election of *one-fourth* of the whole number annually, as provided in section four. The present trustees shall organize and make such classification of their members on or before the *first* Thursday of April in the year of our Lord *one thousand eight hundred and fifty-six*, into terms of one, two, three, and four years, respectively, from the date of such organization.

SEC. 9. The Trustees and visitors shall meet annually, and if necessary, semi-annually; they may also hold special meetings at the request of the Faculty of the University, or *three* of the trustees; and in case of special meetings, notice shall be given to each member of the board of trustees (and visitors, if the business be such as to require their attendance,) at least *ten days* previous to the time of said meeting; and a majority of all the members of the board of trustees shall constitute a quorum to do business; but a less number

may adjourn from time to time until a quorum be obtained. And whenever any trustee shall absent himself from three successive regular meetings of the board, without good cause assigned, at the fourth ; or whenever a majority of all the trustees shall declare any one of their number incompetent, the board of trustees shall declare their seat vacant. The joint board shall have power to remove any trustee from the office of trustee, for any dishonorable or criminal conduct : *Provided*, that no such removal shall take place without giving to such trustee notice of the charge preferred against him, and an opportunity to defend himself before the board ; nor unless two-thirds of the whole number of members of the joint board present voting, shall concur in such removal. And the joint board shall have power, and it shall be their duty in case of removal of a trustee from office by death, resignation, or otherwise, to fill such vacancies, at the first regular meeting of the board, to serve until the next regular election, as provided in section *four*, or their successors are elected. All elections for trustees shall be by ballot, and may be given in person or by proxy.

SEC. 10. The said University and its preparatory departments shall be open to students of both sexes, and to all denominations of Christians, and the profession of any particular faith shall not be required of those who become students. All persons, however, who are idle, or vicious, or whose characters are immoral, may be suspended or expelled.

SEC. 11. All the real and personal estate belonging or which may hereafter belong to said corporation shall be exempted from taxation for any and all purposes whatever.

SEC. 12. That the provisions of this act shall be interpreted liberally for every beneficial purpose hereby intended, and no omission to use any of the privileges hereby granted, shall cause any forfeiture of the same ; nor shall any gift, grant, conveyance or devise to, or for the benefit of the corporation, be defeated or prejudiced by any misnomer, misdescription, or informality whatever : *Provided*, the intention of the parties can be shown, or ascertained beyond reasonable doubt.

SEC. 13. This act shall take effect and be in force from and after its passage, and the act entitled "An act to incorporate the Simpson University at Omaha City, Nebraska Territory,"—approved March 9th, A. D. 1855, is hereby repealed.

Approved, January 23d, 1856.

AN ACT

To define the limits of the several Judicial Districts of the Territory of Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the counties of Douglas, Dodge, Washington, Burt, and Dakota, and the Territory North and West, be and constitute the first Judicial District, and courts shall be held in the county of Douglas on the first Tuesday in March and the third Tuesday in October, annually. In the county of Dodge on the first Thursdays in June and October. In the county of Washington on the first Tuesday in April, and the second Tuesday in November.—In the county of Burt on the first Tuesdays in July and November, and in the other counties in said District at such times and places as the Judge may ap-

point; and his Honor Chief Justice Fenner Ferguson is hereby assigned to and shall reside therein.

SEC. 2. The counties of Cass, Otoe, Lancaster and Clay, and the Territory West thereof, shall be and constitute the Second Judicial District, and courts shall be held in the county of Cass on the third Mondays of March and September, annually. In the county of Otoe on the fourth Mondays of March and September, annually, and in the other counties at such times and places as the judge may appoint; and the Honorable E. R. Hardin, Associate Justice, is hereby assigned to and shall reside in said district.

SEC. 3. The counties of Richardson, Nemaha, Pawnee, and Johnson, and the Territory West of said counties, shall be and constitute the Third Judicial District, and courts shall be held as follows, viz: In the county of Richardson on the first Tuesdays in May and November, annually. In the county of Nemaha on the second Mondays in May and October, annually, and in the other counties in said district at such times and places as the judge may appoint; and his Honor, Associate Justice James Bradly, is hereby assigned to and shall reside in said district.

SEC. 4. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 5. This act to take effect and be in force from and after its passage.

Approved January 26th, 1856.

AN ACT

To authorize Religious Societies to elect Officers and hold Property.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That it shall be lawful for all persons of full age and sound mind belonging to any church, congregation or religious society, to assemble at the church, or meeting house, or other place of worship, and by a plurality of votes, to elect any number of discreet persons of their church, congregation or society, not less than three in number as trustees, to take charge of the estate and property belonging thereto and to transact all affairs relative to the temporalities thereof.

SEC. 2. It shall be lawful for any such church, congregation or religious society, to choose their president of their meetings, by a vote as aforesaid, and at the election provided for in this chapter, every person of full age who worships with such church, congregation or society, and has formerly been considered as belonging thereto, shall be entitled to a vote.

SEC. 3. All lands, tenements, hereditaments, that have been or may hereafter be lawfully conveyed by devise, gift, grant, purchase or otherwise, to any persons as trustees, in trust for the use of any religious society organized, or which may hereafter be organized within this Territory, either for a meeting house, burying-ground, or for the residence of a preacher, shall descend, with the improvements in perpetual succession to, and shall be held by such trustees, in trust, for such society.

SEC. 4. Whenever by the constitution, rules or usages of any particular church, or religious denomination, trustees are required to be appointed by any minister, or presiding elder, or other officer, or officers of such church or denomination, it shall be the duty of such minister, presiding elder, or other officer or officers, to give such trustees a certificate of their appointment, under the

hand and seal of the person making the same, specifying the name by which such trustees and their successors shall forever thereafter be called and known, which certificate shall be acknowledged or proved and recorded in the register's office of the county in which the estate is situate. Whereupon, such trustees and their successors appointed in the same manner, shall be a body corporate, by the name expressed in such certificate; with all rights, powers and privileges of other religious corporations constituted according to the provisions of this act.

SEC. 5. All property held by such societies or corporations as prescribed in this act, shall be exempt from taxation.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved January 26th, 1856.

AN ACT

To Charter the Bank of Florence.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That H. D. Downey, Allan Tomlin, Nathaniel Kilbourn, James C. Mitchell, G. W. Dodge, Levi Harsh and Ebenezer Cook, their heirs and assigns are hereby appointed commissioners, and they, or any five of them are authorized to carry into effect from and after the passage of this act, the establishment of a Bank, to be styled and called the Bank of Florence, and to be located at the City of Florence in Douglas county, Nebraska Territory, with a capital of one hundred thousand dollars, which may be increased at the will of the stockholders to any amount not exceeding five hundred thousand dollars, to be divided into shares of one hundred dollars each; and the said company under the above name and style, are hereby declared capable in law of issuing bills, notes and other certificates of indebtedness, dealing in exchange and doing all things necessary to the carrying on of a regular and legitimate Banking business, and also to buy and possess property of all kinds, and to sell and dispose of the same, to contract and be contracted with, to sue and be sued, to defend and be defended against in all the courts of this Territory.

SEC. 2. That the commissioners herein appointed, shall have power to cause books to be opened for the subscription of said stock, in such manner, and at such times and places, as they or any five of them may appoint; that whenever fifty thousand dollars is fully subscribed, then, those making such subscription shall have power to choose a board of directors, whose duty it shall be to organize said bank, by electing a president, vice-president, and cashier, and that in the election of said directors and officers, each share subscribed or then held, shall entitle the holder thereof to one vote, which may be given in person or by proxy.

SEC. 3. It shall be the duty of the president or vice-president (either of whom shall be competent,) and cashier to attach their respective names to all bills or notes issued by said bank to circulate as currency; and that the stockholders shall be, each and individually liable for the full and final redemption of such issue, payable at their Banking House in gold and silver, and that this charter shall have an existence and be in full force if faithfully complied with, for the term of twenty-five years from the date of its passage and becoming a law of the Territory.

SEC. 4. The stock of said bank shall be assignable and transferable according to such rules and under such restrictions as the board of directors may pre-

scribe, who shall have power at all times to make such rules and regulations as may appear for the well being of said bank, not inconsistent with the Constitution of the United States and Laws of this Territory.

SEC. 5. The directors of the bank shall make or cause to be made, through their cashier under oath or affirmation, an annual report to the Auditor of the Territory or State (as the case may be) a full exhibit of the condition of said bank, which report shall be published in three newspapers of this Territory by said Auditor.

SEC. 6. This act shall be in force from and after its passage.

Approved January 18th, 1856.

AN ACT

To incorporate the Weeping Water Ferry and Bridge Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That William Heligh, Jacob Dawson, M. H. Hathaway, Joseph McCloy, their associates, heirs, and assigns be, and they are hereby, declared a body corporate and politic under the name and style of the Weeping Water Ferry and Bridge Company and by that name and style shall have all the rights and privileges of a corporate association.

SEC. 2. It shall be the duty of said corporation to keep a suitable boat or bridge on the Weeping Water with exclusive privileges for a distance of three miles on the mouth of said Weeping Water, for the safe and speedy transportation of persons and property at all seasonable hours.

SEC. 3. Said company shall be governed by by-laws, rules and regulations not inconsistent with the laws of the United States or this Territory.

SEC. 4. Nothing contained in this act shall prohibit the erection of a free bridge or bridges or the keeping of free ferries.

SEC. 5. This act to take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

To locate a Territorial Road.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Wm. Rector, Wm. Neligh and Jacob Dawson be, and they are hereby, appointed commissioners to locate and establish a Territorial road, commencing at Wyoming in Otoe county, and running from thence westward on the most practicable route to intersect the Territorial road, running from Nebraska city to Grand Island, at some point between Wyoming and Salt creek.

SEC. 2. That the said commissioners, or a majority of them, shall meet at Wyoming on the second Monday in March, A. D., 1856, or within thirty days thereafter, and proceed to locate and establish said road, and their compensation shall be two dollars per day each, for the time actually employed therein.

SEC. 3. That the cost of laying out and establishing said road shall be paid by the respective counties through which it shall pass.

SEC. 4. This act to take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

To Incorporate the Wyoming Steam Mill Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Jacob Dawson, Wm. Neligh, M. H. Hathaway, their associates, heirs and assigns are hereby created a body corporate and politic by the name and style of the Wyoming Mill Company.

SEC. 2. That by the said name and style they may have perpetual succession, and shall be capable in law of suing and being sued in all courts of law and equity, may have and use a common seal and alter the same at will, and that they may be capable in law of acquiring, holding, and conveying property, both real, personal and mixed, for the purpose of erecting a steam mill or mills and carrying on the same at or near Wyoming.

SEC. 3. The capital stock of said company shall be not less than three thousand dollars, and may be increased to fifty thousand.

SEC. 4. The said corporation shall have power to divide the capital stock into as many shares as they may deem proper, and shall have power to do all things incident to the nature of their corporation.

SEC. 5. The object of this incorporation is to build a steam saw, grist and flouring mill or mills, at or near Wyoming, in the Territory of Nebraska, and such other machinery as the said company may consider useful to attach thereto, and transact such other business as may be necessary to keep said mill and other machinery in operation.

SEC. 6. The said company shall have power to make such rules and regulations for their own government as are proper, not inconsistent with the laws of the United States and this Territory.

SEC. 7. The stock of this company shall be deemed and considered in law personal property, and shall be assignable and transferable only upon the books of the corporation.

SEC. 8. This act to take effect and be in force from and after its passage.

Approved January 25, 1856.

AN ACT

Amendatory to an act entitled "An act to Incorporate Wyoming."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That as much of section 44 of said act of incorporation as relates to submitting the said act to a vote of the people of said city, on the first Monday of April, A. D., 1855, together with as much of section 8 of said act, which requires the first election of officers of said city, to be holden on the first Monday in April, 1855, and such other parts of said act inconsistent with this act, be and the same are hereby repealed.

SEC. 2 That section 45 of said act is hereby repealed.

SEC. 3. Whenever ten of the resident householders of said city shall petition any Justice of the Peace of Otoe county, asking for an organization of a city government, it shall be the duty of such justice to fix a day for a municipal election in said city, which shall not be more than twenty days from the time the petition is presented to him, and shall also appoint judges of elections and cause three notices of said election to be posted up in said city, and the said election shall be conducted according to the general election law, and the returns shall be made to said justice, who shall give to the several officers elected certificates of election.

SEC. 4. This act to take effect and be in force from and after its passage.
Approved January 25, 1856.

AN ACT

To authorize James M. Hinton to build a Mill on the north fork of the great Nemaha River.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That James M. Hinton, his heirs and assigns, be and are hereby authorized to build and keep a Grist and Saw Mill on the north fork of the great Nemaha River, in Pawnee county, on the south-west quarter of section thirty-four, township three, range twelve east, for the term of twenty-five years from the date of the passage of this act.

SEC. 2. He may build his dam twelve feet high and have all the necessary races, canals, and aqueducts, in order to establish and work mills or machinery suitable for manufacturing the various kinds of grain or timber in this Territory.

SEC. 3. Said James M. Hinton shall, within twelve months from the passage of this act, be prepared to grind all such grain or saw all such lumber as is usual at such mills, and shall, in all respects, be governed by the laws of this Territory.

SEC. 4. This Act to take effect from and after its passage.

Approved January 25, 1856.

AN ACT

To locate the Penitentiary of Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That T. G. Goodwill, L. L. Bowen, and W. B. Beck be, and are hereby appointed Commissioners to locate a Penitentiary for the Territory of Nebraska.

SEC. 2. Said Commissioners shall locate the said Penitentiary within one mile of the public square in Tekama, in Burt county, and for that purpose shall meet in the town of Tekama, on the first Monday in March next, or within forty days thereafter, and after being sworn well and truly to locate the same, shall proceed, by actual examination, to ascertain the most suitable point for the location of the same.

SEC. 3. When said Commissioners shall have decided on the place for the

location the proprietors of said town shall donate ten acres of land to the Territory of Nebraska, and shall make a good and sufficient title in fee simple to said Territory, upon which they shall permanently locate the said Penitentiary.

SEC. 4. That all money that has or may hereafter be donated by the United States for the purpose of building a Penitentiary, shall be used in constructing the same at the point that may be chosen by the Commissioners for a Penitentiary.

SEC. 5. Should a vacancy occur in the board of Commissioners, the first one remaining on the list shall fill such vacancy by the appointment of a suitable person who shall take the oath required of the other Commissioners.

SEC. 6. This Act to take effect and be in force from and after its passage.

Approved January 22, 1856.

AN ACT

To provide for taking the Census, making Apportionment, holding Elections, and other purposes.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the Marshal of this Territory shall have power and it shall be his duty to appoint a sufficient number of deputies to assist him in taking the census of this Territory.

Said Marshal shall assign a district to each deputy he shall appoint, and said deputies shall proceed to take a census or enumeration of all the inhabitants, actual residents, of the Territory which shall have been assigned them.

Before entering upon the duties of their office said deputies shall take an oath to well and truly perform their duties in taking of said census, to the best of their ability. The taking of said census shall be commenced on the first day of August, and the returns shall be made to the Governor of the Territory on the first day of September. The form and style of books used in taking said census shall be that used in taking the census of this Territory in November, A. D. 1854.

SEC. 2. That the Governor of this Territory shall have power, and it shall be his duty, to proceed to make an apportionment of the members of the Council and House of Representatives, upon the basis of the census returns herein provided for.

He shall also cause to be published and distributed throughout the Territory a numerical list of the census, together with the apportionment.

SEC. 3. In making the apportionment the Governor shall give each county or district representation in the ratio of its qualified voters: *Provided*, that any counties or districts, having any number of qualified voters not sufficient to entitle them to one councilman and representative, each may be added to other counties or districts, making districts of two or more counties or districts.

SEC. 4. That the whole number of members of the House of Representatives of this Territory, for the next session, shall be thirty-five.

SEC. 5. That the day of holding the annual election of the Territory for the year 1856, shall be the first Tuesday of November. On the day of said election, a poll shall be opened at each and every precinct, or place of voting, which shall be designated by the Governor of the Territory, and the elections shall be conducted in accordance with, and in conformity to, the statutory laws of the Territory, and the organic laws of the same.

SEC. 6. The election returns shall be made, signed and certified by the officers appointed or elected for the purpose of superintending elections at each and every precinct in the Territory, a copy of which shall be forwarded to the Governor, who shall proceed to issue certificates of election according to such election returns, to those having the highest number of votes, for member of the Council to be duly elected to the Council, and those having the highest number of votes for members of the House of Representatives, to be duly elected to the House of Representatives.

SEC. 7. That an act entitled "An Act to provide for taking the census, making apportionment, holding elections, and other purposes," approved March 16, 1855, be and the same is hereby repealed.

SEC. 8. This Act to take effect and be in force from and after its passage.
Approved January 26, 1856.

AN ACT

To define the boundaries of Dakota County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the boundaries of the county of Dakota shall be as follows:

Beginning at the north-east corner of the Omaha reserve, thence up the middle of the main channel of the Missouri river until it intersects the range line between ranges five and six, thence south to the north line of the Omaha reserve, thence east to the place of beginning.

SEC. 2. All Acts and parts of Acts conflicting with this Act are hereby repealed.

SEC. 3. This Act to take effect from and after its passage.

Approved January 26, 1856.

AN ACT.

To define the boundaries of the Counties of Pawnee, Richardson, Nemaha Otoe and Cass.

SECTION 1. *Be it enacted by the Council and House of Representatives* that the boundaries of Pawnee county shall be as follows :

Beginning at the south-west corner of township one, north of range nine east, and extending from thence east to the south-east corner of township one, north of range twelve east, thence north to the north-east corner of township four, north of range twelve east, thence west to the north-west corner of township four, north of range nine east, thence south to the place of beginning.

SEC. 2. The boundaries of Richardson county shall be as follows :

Beginning at the south-west corner of township one, north of range thirteen east, thence east to the middle of the main channel of the Missouri River, thence up said channel, until it intersects the line dividing townships three and four north, thence west to the north-west corner of township three, north of range thirteen east, thence south to the place of beginning.

SEC. 3. The boundaries of Nemaha county shall be as follows :

Beginning at the south-west corner of township five, north of range nine east, thence east to the south-east corner of township five, north of range twelve east, thence south to the south-west corner of township three, north of range thirteen east, thence east to the middle of the main channel of the Missouri River, thence up said channel, until it intersects the line dividing townships six and seven, thence west to the north-west corner of township six north of range nine east, thence south to the place of beginning.

SEC. 4. That the boundaries of the county of Otoe shall be as follows :

Beginning at the south-west corner of township seven, north of range nine east, thence east to the middle of the main channel of the Missouri River, thence up said channel until it intersects the line dividing townships nine and ten, thence west to the north-west corner of township nine, north of range nine east, thence south to the place of beginning.

SEC. 5. That the boundaries of Cass county shall be as follows :

Beginning at the south-west corner of township ten, north of range nine east, thence east to the middle of the main channel of the Missouri River, thence up said channel until it intersects the Platte River, thence up said Platte River until it intersects the line dividing township twelve and township thirteen north the last time, thence west to the north-west corner of township twelve, north of range nine east, thence south to the place of beginning.

Approved January 26, 1856.

AN ACT

Amendatory to an Act entitled "An Act to authorize Gideon Bennett to keep a Ferry on the Missouri River, at a place called Bennett's Ferry, in Pierce county, Nebraska Territory."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, that section 4 of an act entitled "An Act to authorize Gideon Bennett to keep a ferry on the Missouri River at a place called Bennett's Ferry, in Pierce county, Nebraska Territory," be, and the same is hereby repealed.

SEC. 2. That the owner or owners of said ferry shall, on or before the first day of May next, execute and file with the county clerk of Otoe county a good and sufficient bond with one or more securities, to be approved by said clerk in the penal sum of one thousand dollars, payable to the Territory of Nebraska, conditioned for the faithful performance of their duties as ferrymen.

SEC. 3. This act shall take effect from and after its passage.

Approved January 26, 1856.

AN ACT

Amendatory to an Act, entitled "An Act to incorporate Kearny City."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, that as much of section forty-four (44) of an act entitled an act to incorporate Kearny city, as relates to submitting the said act to a vote of the people of said city, on the first Monday of April, A.D. 1855, together with as much of section eight (8,) of said act, which requires the first election

for officers of said city to be holden on the first Monday of April, A.D. 1855; and such other parts of said act inconsistent with this act, be, and the same are hereby repealed.

SEC. 2. That the first election for officers of said city, shall take place on the first Monday of May, A.D. 1856, and annually, on the said Monday of May thereafter.

SEC. 3. That all acts and parts of acts, inconsistent with this act are hereby repealed.

SEC. 4. This act to take effect from and after its passage.

Approved January 22, 1856.

AN ACT

To incorporate the Cass County Agricultural Society.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, that H. C. Wolph, John F. Buck, G. W. Moore, Hon. A. Towner, William Young, Augustus Case, Thomas S. Gaskill, Levi G. Todd, Broad Cole, John Carroll, W. H. Davis, and Joseph Vanhorn and their associates and successors, be, and they are hereby declared a body corporate, capable in law of contracting and being contracted with, suing and being sued, pleading and being impleaded in the courts of this Territory, and may purchase, hold and sell real estate as provided in section five of this act.

SEC. 2. The purposes of this incorporation are hereby declared to be—the encouragement of agriculture, and the improvement of the breeds of horses, cattle, sheep and swine, and also the encouragement of the arts, and domestic manufactures.

SEC. 3. At least five of the above named incorporators shall meet as soon as convenient after the passage of this act, at the town of Rock Bluffs, in Cass county, and proceed to organize said society, by electing a President, Secretary, Treasurer and Board of Managers, and adopt a Constitution and By-laws for the government of said society, not inconsistent with the laws of this Territory.

SEC. 4. As soon as practicable, after the election provided for in section three of this act, the secretary of the society shall open a book of membership, in manner and form to be prescribed by the board of managers, and any person being a citizen of said Cass county, who shall subscribe his name in said book, and pay to the Treasurer of said society the fee provided for in the constitution and by-laws of said society (which shall not be more than five dollars, nor less than one dollar,) shall be a member of said society, and be entitled to vote at any and all elections of officers of said society; but no certificate of membership shall be assignable, nor shall subscriptions on said books be transferable.

SEC. 5. The said society in their corporate name may acquire by donation or purchase real estate sufficient for fair and exhibition grounds, not exceeding forty acres; and may sell and convey the same by deed, and re-invest the proceeds or any part thereof, as the board of managers may direct.

SEC. 6. No president or other officer of this society shall receive any compensation for his services as such; nor shall the funds of this society be used for any other purpose than to defray the incidental expenses of said society, and in the payment of premiums under the direction of the society.

SEC. 7. Nothing in this act shall be construed to prevent the society from receiving gifts, donations and devises, provided such gifts, donations and devises shall only be used in carrying out the objects of this society, as expressed in section second of this act.

SEC. 8. This corporation shall have succession until repealed by law.

SEC. 9. This act to take effect, and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

To incorporate the town of Rock Bluffs, in Cass county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the town site claimed by the Rock Bluffs Company, upon which the town of Rock Bluffs is located, together with all additions that may be hereafter made thereto according to law, is hereby declared to be a town by the name and style of the town of Rock Bluffs.

SEC. 2. That said town is hereby made a body corporate, and is invested with all the privileges and attributes of a municipal corporation and may elect such officers, pass such laws, ordinances and rules for the benefit and government of said town, as shall from time to time be deemed expedient and proper, not inconsistent with the laws and Constitution of the United States and the laws of this Territory.

SEC. 3. All citizens of said town entitled to vote at county elections, may vote at any election of any officer or officers to be elected for the government of said town.

SEC. 4. Whenever ten of the resident householders of said town shall petition any justice of the peace, asking for the organization of said municipal government, the said justice shall fix the time for a municipal election, which shall not be more than twenty days after the petition is presented to him; and shall appoint three judges of said election, and shall give notice thereof by posting up notices in three public places in said town; and the said election shall be held in accordance with the general election law, and the returns shall be made to the justice who ordered the election, and he shall give to the persons having the highest number of votes, certificates of their election.

SEC. 5. At the aforesaid election, the legal voters shall elect a Town Council, consisting of five, who shall possess the qualifications of electors: *Provided,* That the person having the highest number of votes shall be President, until otherwise provided for by law; also, a Town Clerk and Marshal, which election shall be the first organization of the said town, and thereafter such officers may be abolished or new officers created, as may be prescribed by ordinance, or as the majority of legal voters may from time to time direct by their vote, at any town election to be held thereafter.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

To provide for changing the name of Otoe County to that of Pierce.

SECTION. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That at the next general election in this Territory, the qualified voters of Otoe County shall determine by vote, whether the name of the county shall be changed to that of Pierce.

SEC. 2. That each voter in the said county may have written or printed on his ticket, the word Otoe, or the word Pierce; if the number of tickets having the word Pierce on them, be greater than the number having Otoe, then the name of said county shall hereafter be, *Pierce*, but if not, the name of said county shall remain unchanged, and if no ballots be cast with either of the words as above, the name of the county shall remain unchanged.

Approved January 26, 1856.

AN ACT

To prevent the use of intoxicating liquors among the Indians, or Half Breeds in this Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That from and after the passage of this act, it shall not be lawful for any person to sell, give away, or in any way, manner, or subterfuge, traffic, trade, exchange or otherwise dispose of any intoxicating liquors to any Indian or Half Breed residing in, or passing through this Territory, and for every such offence, or violation of this law, the offender shall be fined not less than twenty-five, nor more than five hundred dollars, or imprisonment in the county jail, for the space of not less than twenty days, for each and every offence to be adjudged before any civil tribunal in this Territory.

SEC. 2. And for the second offence, shall be fined not less than one hundred dollars, or imprisonment in the county jail one year.

SEC. 3. It shall be the duty of the sheriffs, constables, justices, and all peace officers, as well as grand jurors, to take notice of violations of this law, and bring offenders to justice, and for every failure on the part of any such officers to report such violation, they shall be fined the same as though they were guilty of the offence themselves.

SEC. 4. It is the duty of all good citizens to enforce this law, and wherever liquor is found in the possession of Indians or Half Breeds, it is the duty of all citizens to destroy such liquor, as well as the duty of all peace officers.

SEC. 5. The fines, one half to go to the benefit of common schools, and the other to be appropriated to defraying the expenses of suits brought under this act.

SEC. 6. It shall be "prima-facie" evidence of a violation of this law, whenever an Indian or Half Breed shall be found in a room with closed doors, where intoxicating liquors are kept, or seen with a jug, or other vessel which will hold such liquor, going from any place where it is known to be kept, or where any suspicion shall rest upon such place of selling such liquors, and it is made the duty of all peace officers to see if there is any of said liquors with such Indian,

and on finding such shall destroy the same, and report the same to the proper civil authority.

SEC. 7. Any person or Ferry, bringing any intoxicating liquors over the Missouri River for any Indian or Half Breed, into the Territory of Nebraska, shall be deemed guilty of a violation of this law.

SEC. 8. An information or indictment under this act, may allege any number of violations of its provisions by the same party, and he may be found guilty of, and punished for each offence as under separate information or indictment, but a separate judgment must be entered in each instance in which a verdict of guilty is found.

Approved January 26, 1856.

AN ACT

To incorporate South Nebraska City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all the Territory within the geographical limits of South Nebraska City, as designated upon the lithographed plats of said city, together with all additions that may be hereafter made thereto, according to the general survey and according to law, is hereby declared to be a city by the name and style of South Nebraska City: *Provided,* That nothing in this act shall be so construed as to conflict with "An Act to incorporate Nebraska City," approved March 2d, 1855.

SEC. 2. The said city is hereby made a body corporate and politic, and is hereby invested with the same power and corporate rights and privileges as are granted in an act, entitled, "An Act to incorporate Kearney City."

SEC. 3. This act to take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

To repeal an act, entitled, "An Act to restrain sheep and swine from running at large in Nemaha county," approved March 2d, 1855.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all that part or parts of an act approved March 2d, 1855, to restrain sheep and swine from running at large in Nemaha county, is hereby repealed.

SEC. 2. *Provided,* That the legal voters of the county above named shall have the privilege of voting upon the question on the first Monday in April next; then if a majority of the resident voters shall oppose this repeal, such repeal shall be of no force, otherwise of full force and effect in such county.

SEC. 3. *Be it further enacted,* The said election shall be held and conducted in the same manner as provided in the above named act.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

To incorporate the Otoe County Lyceum and Literary Association in the Territory of Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Edward R. Harden, Wm. B. Hail, Jacob Dawson, J. C. Campbell, Henry Bradford, J. S. Morton, H. H. Harding, H. M. Giltner, M. W. Riden, D. L. McGary, I. L. Gibbs, and their associates and successors, be, and they are hereby, created a body corporate and politic, by the name and style of the Otoe County Lyceum and Literary Association in the Territory of Nebraska.

SEC. 2. For the present, the aforesaid individuals shall constitute the board of trustees for said institution.

SEC. 3. The objects of said corporation shall be, the promotion of the general interests of education, and to establish and maintain a Library and Reading Room in the county seat of Otoe county.

SEC. 4. The corporate powers hereby created shall be such only as are essential or useful in the attainment of said object, and such as are usually conferred upon similar bodies corporate.

SEC. 5. The trustees of the corporation shall have power to appoint a president, secretary and librarian; purchase, erect, or lease, suitable buildings, and grounds, for the use of such corporation, and to purchase, or receive by donation, bequest, or otherwise, books, maps, charts, and apparatus that may be necessary to carry out the objects of the association, and to subscribe for such periodicals as may be deemed expedient and the funds of the corporation will warrant.

SEC. 6. This corporation shall have power and authority to raise a capital stock in shares of five dollars each, to the amount of ten thousand dollars, exclusive of such sum as may be given by donation, bequest, or otherwise, and as soon as one hundred shares are subscribed the stockholders are hereby authorized to organize said association.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

To authorize the Territorial Treasurer to borrow money.

SECTION 1. *Be it enacted by the Council and House of Representatives of Nebraska Territory*, The Territorial Treasurer is hereby authorized to borrow, upon the bonds of this Territory, the sum of four thousand dollars, at a rate of interest not to exceed fifteen per cent. per annum, redeemable at any time within ten years, issued to cover that amount, together with the interest that will accrue at the above rates, which sum shall be used only in paying the claims of officers and employees of the Council and House of Representatives of the first and second session of the Legislative Assembly, and for taking the census for the year 1855 upon the warrants of the Auditor, and the Treasurer shall make a full report of his acts under this section to the Legislative Assembly at its next session.

Approved January 26th, 1856.

AN ACT

To establish the Ten Hour System.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That ten hours shall constitute one day's labor, so far as it concerns laborers and mechanics, that it be a general, uniform law throughout the Territory.

SEC. 2. This act to take effect from and after its passage.

Approved January 26th, 1856.

AN ACT

To incorporate the "People's Mills" Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That Thomas Gibson, Wm. H. Davis, A. T. Chapin, J. Evans, Samuel Whittier and L. R. Campbell, their associates, heirs and assigns, are hereby created a body corporate by the name and style of the "People's Mills" Company.

SEC. 2. That by the said name and style they may have perpetual succession, and shall be capable of suing and being sued in all courts of law and equity, may have a common seal and alter the same at will, and that they may be capable in law of acquiring, holding, and conveying property, both real, personal and mixed, for the purpose of erecting a mill or mills, and carrying on the same in Dodge county, Nebraska Territory.

SEC. 3. That the capital stock of the said company shall be not less than three thousand dollars, and may be increased to fifty thousand dollars.

SEC. 4. That the said corporation shall have power to divide the capital stock into as many shares as they may deem proper, and shall have power to do all things incident to the nature of their corporation.

SEC. 5. That the object of this incorporation is to build a saw, grist and flouring mill or mills in Dodge county, as aforesaid, and such other machinery as the said company may consider useful to attach thereto, and transact such other business as may be necessary to keep said mills and other machinery in operation.

SEC. 6. That the company shall have power to make such rules and regulations for their own government as are proper, not inconsistent with the laws of this Territory and of the United States.

SEC. 7. That the stock of this company shall be deemed and considered in law personal property, and shall be assignable and transferable only upon the books of the said corporation.

SEC. 8. That this act shall take effect and be in force from and after its passage.

Approved January 26th, 1856.

AN ACT

To establish the Omaha and Council Bluffs Omnibus Line.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Harrison D. Harl, his associates, executors, heirs and assigns shall have for the period of three years from the passage of this act, the exclusive privilege of establishing and having an Omnibus Line or Lines, in Omaha City, for the conveyance of passengers to and from the ferry landing or landings, and crossing the roads or streets leading from Omaha City to Council Bluffs City, in Iowa.

SEC. 2. The owner or owners of said omnibus line or lines shall, immediately upon the passage of this act, procure suitable omnibuses or hacks for the conveyance of passengers, and run the same at stated hours, to and from said ferry landings and crossings, for the accommodation of all persons going to or returning therefrom, upon the payment of the fare hereinafter established.

SEC. 3. The owner or owners of said omnibus line shall be allowed to charge the following rates of fare, and no more, to wit: From said landings to any part of said city, for each passenger and ordinary baggage, twenty-five cents; and if the said owner or owners shall tax and receive from any person a greater sum than is herein allowed, he or they shall, upon conviction thereof, forfeit and pay the sum of five dollars for each offence, for the use of the school fund of Douglas county.

SEC. 4. Any person or persons, or body corporate who shall infringe upon the rights and privileges herein granted unto the said H. D. Harl, his associates, executors, heirs and assigns, during the term specified in the first section of this act, shall forfeit and pay the sum of ten dollars for each offence, to be collected as other debts are collected at law, for the use of the school fund of Douglas county: *Provided*, That nothing in this act shall be so construed as to prevent any person residing in Douglas County, Nebraska Territory, from conveying persons or property to and from said Omaha City or elsewhere, and receive pay for the same.

Approved January 26th, 1856.

AN ACT

To incorporate the Omaha Odd Fellows' Hall Association.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That T. G. Goodwell, H. D. Johnson, George Armstrong, and A. S. Bishop, their associates and assigns, are hereby created, constituted and declared a body corporate and politic, by the name and style of the Odd Fellows' Hall Association of Omaha Lodge, No. Two, of Nebraska Territory."

SEC. 2. The above named persons are hereby appointed Trustees for said Association, and shall continue in office until the regular election held in pursuance of the By-Laws of said Association.

SEC. 3. That by the said name and style, said Association may have perpetual succession, and shall be capable of suing and being sued in all courts of law and equity; may have a common seal and alter the same at

pleasure, and that they may be capable in law of acquiring, holding and conveying property, real, personal and mixed, for the purpose of erecting an Odd Fellows' Hall in Omaha City, Nebraska Territory.

SEC. 4. Said Association shall have power to make all needful rules and regulations for the government of the same, not inconsistent with the laws of the United States and of this Territory.

SEC. 5. This act to take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

Supplementary to an act entitled "An act to incorporate the City of Fontenelle."

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That as much of section eight (8) of an act, entitled "An act to incorporate the City of Fontenelle," as relates to the election of City officers, on the first Monday of November, A. D. 1855, and annually on the same day thereafter, and such other parts of said act, inconsistent with this act, be, and the same are hereby repealed.

SEC. 2. That the first election for officers of said City of Fontenelle shall take place on the first Monday of May, A. D. 1856, and annually on the first Monday of May thereafter.

SEC. 3. That all and every part of an act entitled "An act to incorporate the City of Fontenelle," that does not conflict with this act, shall and is hereby declared to remain in full force and effect.

SEC. 4. That this act take effect from and after its passage.

Approved January 22, 1856.

AN ACT

To incorporate the Decatur Town and Ferry Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Peter A. Sarpy, William B. Beck, John B. Folsom, and Stephen Decatur, and their associates and successors be, and they are hereby created a body politic and corporate, by the name of "The Decatur Town and Ferry Company," and by that name are hereby invested with power and authority to hold occupy, possess, and enjoy, for the purpose of a Town and Ferry, the premises described and bounded as follows: Beginning in the center of the main channel of the Missouri River at the north-easterly corner of Burt county, at the south line of the Omaha Indian Reservation; running thence west on the south line of said Reservation one mile; thence south one mile; thence east to the center of the main channel of said River; thence up said River in the center thereof to the place of beginning.

SEC. 2. The premises described in the aforesaid boundaries shall hereafter be known as the town of "*Decatur*."

SEC. 3. The said company and their successors shall have also the right to claim and hold for their own use and convenience a quarter section of timber,

such as they may select (not heretofore claimed and legally held by any other person or persons) at any point within six miles of their town site.

SEC. 4. Whenever a sufficient number of inhabitants shall have settled in the said town of Decatur to warrant, in *their* opinion, an organization under a city charter, then it shall be lawful for the legal voters of said town to organize the same, and all the rights and privileges granted (subject to the same restrictions) in an act entitled "An act to incorporate Nebraska City,"—approved March 2d, 1855, to the inhabitants of Nebraska City, are hereby granted, and at all times to be granted to "Decatur" and the inhabitants thereof.

SEC. 5. And be it further enacted, that said company and their successors shall have the exclusive privilege and right to run and keep a ferry across said river at the town of "Decatur," and at any point within five miles of said town either way, at all times subject to such regulation as the Legislative Assembly may enact.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved January 26th, 1856.

AN ACT

To incorporate the Masonic and Odd Fellow's Hall Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That Miles W. Brown, John B. Boulware, Charles F. Holly, William P. Walker, Lewis Has, George W. Boulware, David Lindly, J. W. Stull, John Boulware, J.-C. Campbell, W. P. Birtchfield, William Anderson, A. J. Armstrong, Edward R. Harden, M. W. Riden, I. L. Gibbs, their associates, heirs and assigns are hereby created, constituted and declared a body corporate and politic, by the name and style of "The Masonic and Odd Fellow's Hall Company" of Otoe county.

SEC. 2. That by the said name and style they shall have perpetual succession, and shall be capable of suing and being sued in all courts of law and equity, may have a common seal and alter the same at will, and that they may be capable in law, of acquiring, holding and conveying property, both real, personal and mixed, for the purpose of erecting in Nebraska City, South Nebraska City, or Kearney City, Otoe county, a suitable building or buildings, to be used in part as a Hall for Masonic and Odd Fellowship purposes.

SEC. 3. The capital stock of said company shall not be less than one thousand dollars nor more than ten thousand, to be divided into fifty or more equal shares.

SEC. 4. The said company shall have power to make such rules and regulations for their own government and to carry out the object of their creation, not inconsistent with the laws of this Territory or with those of the United States.

SEC. 5. The stock of this company shall be deemed and considered in law, personal property, and shall be assignable and transferable.

SEC. 6. This company shall have the power to do all things incident to the nature of their corporation.

SEC. 7. This act to take effect and be in force from and after its passage.

Approved January 24th, 1856.

AN ACT

To incorporate Elk Horn City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all the Territory within the geographical limits of Elk Horn City, together with all additions that may be hereafter made thereto according to law, is hereby declared to be a city by the name of Elk Horn.

SEC. 2. Said city is made a body corporate and politic, and is vested with all the powers and attributes of a municipal corporation.

SEC. 3. The Legislative authority of said city is hereby vested in a City Council, consisting of a Mayor and four Aldermen.

SEC. 4. Every legal voter of this Territory who shall have been a resident of said city twenty days, next preceding an election, is hereby declared a citizen of said city, and is entitled to vote at all the elections thereof.

SEC. 5. All legal voters shall be eligible to any elective office mentioned in this act.

SEC. 6. Whenever a majority of the legal voters of said city, shall signify in writing to the judge of probate of the county in which said city may be located, that they desire an organization and an election of city officers, the said judge shall within ten days thereafter, give a written or printed notice, which he shall cause to be posted in at least four of the most public places in said city, giving ten days' notice of the election in said city, at which said election there shall be elected a Mayor, four Aldermen, a Recorder, Treasurer, Assessor and Marshal.

SEC. 7. The said judge of probate shall appoint judges and clerks of said election, which election shall be the first organization of said city, and thereafter such offices may be abolished or new offices created, as the majority of the legal voters may from time to time direct by their vote, at any city election to be held thereafter.

SEC. 8. Said officers before entering upon their duties shall take and subscribe to an oath, before some person duly qualified to administer oaths in the Territory, to support the Constitution of the United States and the Laws of this Territory, and to faithfully perform the duties of their respective offices, which said oath shall be filed in the office of the City Recorder; said Mayor and Aldermen after being thus duly qualified, shall constitute the City Council.

SEC. 9. Said Council shall be the judge of the qualifications and election of its own members, may determine the rules of its own proceedings, enact such ordinances not inconsistent with the Constitution and Laws of the United States and of this Territory, as they may deem proper, which shall be signed by the Mayor, attested by the Recorder, and published in some newspaper of the city two weeks, or be posted in three public places in said city for a like period before taking effect.

SEC. 10. It shall be the duty of the Mayor to see that the ordinances of the city are executed and their violations punished, to superintend and direct the official conduct of the subordinate officers, to sign and seal all commissions, licenses and permits granted by the City Council, and to perform such duties and exercise such powers as pertain to the office of Mayor of a city generally, and such as may be granted or imposed by ordinance consistent with law. He shall be a conservator of the peace within the city and *ex-officio* a justice of the peace, and is invested with exclusive original jurisdiction for the violation of the city ordinances, and with criminal jurisdiction of offences against the laws of the Territory committed within the city, and with civil jurisdiction limited to the

city, and shall not be disqualified from acting in such magisterial capacity by any proceedings being in the name or in behalf of the city; he shall be the presiding officer of the City Council when present, and shall give the casting vote when there is a tie, and in his absence the Council may appoint a president for the time being from their own body.

SEC. 11. Appeals to the District Court in the same county shall be allowed from the judgment and decisions of the Mayor, in the same cases and in like manner as may be allowed by law from those of other justices; he shall be entitled to demand and receive the same fees as may be allowed by law to justices of the peace.

SEC. 12. The Treasurer, Recorder, Assessor and Marshal, shall give such bonds as may be required of them by ordinance, which said bonds shall be approved by the Mayor, and filed with him.

SEC. 13. When a vacancy occurs in any of the elective offices, the Council may fill the same by appointment of record, until the next annual election, and until the qualification of the successor.

SEC. 14. It is hereby made the duty of the recorder to keep a plain and correct record of all the proceedings of the council, which shall be open to the inspection of any citizen. He shall also perform all such other acts and duties as may be by ordinance required of him.

SEC. 15. The marshal shall be a conservator of the peace and executive officer of the Mayor's Court, and in cases of the violation of the city ordinances and criminal laws of the Territory, may execute process in any part of the county; he shall have the same authority to quell riots and disturbances, to prevent crimes and arrest offenders within the city that the sheriff has within his county, and may in like manner and under the same penalties require the aid of citizens, and shall perform such other duties as may be imposed upon him by ordinance. He may appoint one or more deputies, and shall be responsible for their duties when acting officially, for the service of legal process. He shall be entitled to the same fees as a constable, and for other services required by the council, such compensation as it may allow.

SEC. 16. No member of the council shall be eligible to any office within the gift of the council during the term for which he is elected, nor shall he be interested directly or indirectly in the profits of any contract or job of work to be performed for the city during said term.

SEC. 17. At all elections the polls shall be opened between the hours of eight and ten in the forenoon, and at all elections after the first the mayor and two of the alderman shall act as judges, and the recorder and treasurer as clerks thereof. The election returns shall be made to the council who shall examine them at their next meeting and declare who are elected, and shall cause an abstract of the votes to be recorded in a book to be kept for that purpose.

SEC. 18. The recorder, treasurer and assessor, shall receive such fees as the city council shall deem right, not exceeding the amount allowed county officers for similar services.

SEC. 19. The council may hold its regular meetings at such times and places as may be provided for by the ordinance, and may hold called sessions by the mayor giving proper notice thereof. All meetings of the council shall be public, except on particular occasions, when the majority shall deem that the public good requires secrecy for a time, said council may appoint in such manner and for such time as it deems proper all necessary city officers, prescribe their duties, powers and qualifications, and may provide for the election of any such officers by the citizens, and shall regulate the amount of fees to be received

by them for performing their respective duties. Such officers before entering upon the duties of their office, shall take such an oath and give such bonds as may be required of them by the said council.

SEC. 20. The recorder as well as the mayor is hereby authorized and empowered to administer oaths.

SEC. 21. The council is authorized to establish and organize fire companies and provide them with fire engines, hose and other apparatus, and to impose penalties for the violation of the city ordinances, not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, by complaint before the mayor, and the laws of the Territory relative to carrying into effect judgments of justices of the peace imposing fines, shall be applied to judgments in the above cases.

SEC. 22. The council may regulate the keeping of gunpowder within the city limits, and shall have the exclusive authority to provide for the license and prohibition of all exhibitions, shows and theatrical performances, billiard tables, ball alleys; or other bowling saloons and places where games of skill or chance are played, also for the sale of intoxicating liquors; *Provided*, that no license for the latter purpose shall be granted for a less sum than fifty dollars, nor for a less term than one year: *And provided further*, that the applicant shall give bonds to the amount required by the council. All means arising from and under the provision of this section shall belong exclusively to the city, and shall be paid into the treasury thereof.

SEC. 23. The city council shall provide for the keeping of the public money of the city, and the manner of disbursing the same, and shall cause all claims against the city to be audited, and all city officers shall be accountable to said city in such manner as the council thereof may direct. Said council shall publish during the month of January annually a true and correct statement of the fiscal affairs of the city.

SEC. 24. Imprisonment for the violation of any city ordinance shall not exceed thirty days, and the county jail shall be the place of the imprisonment, but at the expense of the city.

SEC. 25. The city council is hereby authorized to levy and collect taxes not exceeding one-half of one per cent. on all taxable property within the city, according to the laws of the Territory. The assessment shall be made in manner and form to be provided for by said council. The marshal shall be collector, or in case of absence or disability, such person as the council shall appoint in his stead, who before proceeding to collect said taxes shall give twenty days' notice of the assessment and levy thereof in general terms, without the name of or description of the property, in a newspaper printed in the city, if there be one, if not, then by like notice posted in three of the most public places in the city. At any time during which said notice is being thus published any person aggrieved by the assessment or taxation, may appear before the council, which may correct the same if found erroneous.

SEC. 26. The assessor shall make the assessment provided for in the preceding section, and shall make out a tax list, and the mayor shall endorse thereon an order to the marshal to collect the taxes therein levied, which shall authorize him to collect the same by levy and sale, as on execution, and taxes on real property shall be a lien thereon, and it may be sold therefor when the taxes remain unpaid six months after publication of notice thereof; such sale shall be made in accordance with the provisions of the general revenue laws of the Territory.

SEC. 27. The council is authorized to borrow money for any object in their discretion, if at a meeting held in pursuance of due notice (not less than twenty days,) stating distinctly the nature and object of the loan, and the amount

thereof, the voters of the city shall determine in favor of such loan by a majority of two-thirds of the legal votes cast at said meeting, and said loan can in no case be diverted from the specified object.

SEC. 28. All road tax which may be paid upon any property in said city in lieu of labor or otherwise, shall be paid to the proper authorities of said city for the improvement of the streets thereof.

SEC. 29. Any person being a resident of said city, subject by the laws of the Territory to do work upon roads and highways, shall be required to do and perform or cause the same to be done under the direction of the proper authorities upon the streets and alleys of said city, or public roads and highways leading thereto, as said authorities may direct; the city council shall supersede the supervisor or other road officer in all jurisdiction within the corporate limits.

SEC. 30. The treasurer and assessor in addition to the duties strictly appertaining to their respective offices, shall perform all such other acts and duties as may be required of them by the city council, and for all such services a reasonable compensation shall be allowed them.

SEC. 31. This act to take effect from and after its passage.

Approved January 22, 1856.

AN ACT

To create a new Election District in the southern portion of Douglas County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* All that portion of territory included within the following boundaries, to-wit: beginning at a point in the middle of the main channel of the Missouri river, due east of a point in the middle of the main channel of the Platte river, where the same disembogues into the said Missouri river, thence up the middle of the main channel of said Platte river to a point where the north boundary line of the second tier of townships, north of the third standard parallel crosses said Platte river, thence due east on said north boundary line to a point in the middle of the main channel of the Missouri river, thence down the middle of the main channel of said Missouri river to the place of beginning—shall be, and the same is hereby, erected into a separate Election District for the purpose of electing Councilmen and members of the House of Representatives.

SEC. 2. In making an apportionment of the representation in the Legislative Assembly, the territory included within the above described boundaries shall be treated as a separate and distinct district, and said apportionment to the same shall be in the ratio of the qualified voters residing within said limits.

SEC. 3. For all election purposes other than those above specified, the said district shall be and constitute a portion of Douglas county in like manner as heretofore.

SEC. 4. This Act to take effect and be in force from and after its passage.

Approved January 22, 1856.

AN ACT

To reconcile a conflict between the Election Law and the Act for taking a new Census.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the next general election shall be held on the first Tuesday of November instead of the first Monday of August.

SEC. 2. All that part of the Census Act which relates to the power of the Governor in forming precincts, receiving returns of elections, and granting certificates of elections, is hereby declared inoperative ; but said election shall be conducted in all respects as provided in the election law, except the time of holding election.

Approved January 26, 1856.

AN ACT

To authorize Jacob Nofsinger, his associates, heirs, and assigns, to establish and keep a Ferry across the Missouri River at Mount Vernon, in Nemaha county, Nebraska Territory.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska as follows:* That Jacob Nofsinger, his heirs and assigns, executors and administrators, shall, for the period of fifteen years from the passage of this act, have the exclusive right and privilege of keeping a ferry on the Missouri river at Mount Vernon, for the purpose of crossing the same at the above named point in Nemaha county, as aforesaid.

SEC. 2. That such exclusive right to keep such ferry shall extend a distance of two miles each way, following the main channel of the river from said point, and it shall be unlawful for any other person or persons to keep a ferry within said limits as aforesaid.

SEC. 3. The owner or owners of said ferry shall, on or before the first day of April, A. D. 1856, place at said ferry, for the use of the same, a good and sufficient boat or boats, and shall, from sun-up in the morning until sun-set in the evening, when the navigation of said river is not dangerous, be prepared to cross all persons and property with the least possible delay.

SEC. 4. The owners of said ferry shall, on or before the first day of April, A. D. 1856, execute and file with the clerk of Nemaha county, a good and sufficient bond, with one or more sureties, to be approved by said clerk in the penal sum of five hundred dollars, payable to the Territory of Nebraska, conditioned for the faithful performance of his duties as ferryman.

SEC. 5. The owners of said ferry shall be allowed the following rates of ferriage :

For two horses and wagon, loaded or unloaded,	-	-	-	\$ 75
For each additional pair of horses, mules, or oxen,	-	-	-	20
For horse or mule and buggy,	-	-	-	50
For led horse or mule,	-	-	-	15
For loose cattle, per head,	-	-	-	05
For sheep and hogs, per head,	-	-	-	03
For each footman,	-	-	-	05
For hundred weight of freight,	-	-	-	05
For each thousand feet of lumber,	-	-	-	1 50

SEC. 6. A list of the above rates shall be placed upon the ferry-boat or some conspicuous place near the landing, and if the owner or owners shall tax and receive from any person a greater sum than is herein allowed for ferrying, he shall, upon conviction thereof, forfeit and pay to the party aggrieved the sum of ten dollars for each offence, and suit for the recovery of the same shall be commenced by action of debt in the name of the party so aggrieved.

SEC. 7. This Act shall take effect from and after its passage.

Approved January 25, 1856.

AN ACT

Establishing the mode of Locating and changing County Seats.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, that whenever any county shall be organized in the Territory, after the passage of this act, the qualified voters thereof are hereby empowered to select the place of their county seat by a vote at the first election held in the county for the choice of county officers; for this purpose, each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed, the place having a majority of all the votes polled, shall be the county seat, and public notice of said location shall be given within thirty days, by the tribunal transacting county business, by posting up notices in three several places in each precinct in the county.

SEC. 2. Whenever the inhabitants of any county are desirous of changing the place of their county seat, and upon petitions being presented to the tribunal transacting county business, signed by two-thirds of the qualified voters of the county, it shall be the duty of said tribunal in the notices for the next general election, to notify said voters to designate upon their ballots at said election, the place of their choice; and if upon canvassing the votes so given, it shall appear that any one place has two-thirds of the votes polled, such place shall be the county seat, and notice of such change shall be given as hereinbefore provided in the case of the location of county seats of new counties.

SEC. 3. If no one place has a majority of all the votes polled, as provided for in section one, it shall be the duty of the tribunal transacting county business, within one month after said election, to order a special election, and give ten days' notice thereof, by posting up three notices in each precinct in the county, at which election, votes shall be taken by ballot between the three highest places voted for at the first election. And if no choice is made at such election, notice of another election shall be given as above provided for, to decide between the two highest places voted for at the last election, and the place having the highest number of votes shall be the county seat.

SEC. 4. Whenever any county seat shall be located upon the public lands, it shall be the duty of the tribunal transacting county business to enter a quarter section of land at the place so designated, at the expense of, and for the use of the county within three months thereafter, if said land be subject to private entry; if not, he shall claim the same as a pre-emption under the laws of the United States, for the use of said county.

SEC. 5. The aforesaid tribunal shall, within three months after the selection, cause the same to be surveyed into town lots, squares, streets and alleys, and platted and recorded in pursuance of law; and shall select the place for the

county buildings thereon, reserving for that purpose so many of said lots as may be deemed necessary.

SEC. 6. The remainder of said lots shall be offered at public sale by the sheriff of said county to the highest bidder, at the times and places to be designated in the notices of such sales, which shall be posted at three public places in the county, and published in some newspaper, at least thirty days previous to such sales. The terms of sale shall be one-third cash, and the balance on time, as the county tribunal may deem best, and may dispose of lots at private sale, upon terms as above provided for.

SEC. 7. Purchasers of the aforesaid lots shall receive a certificate of purchase from said sheriff, entitling the holder to a warrantee deed from the county tribunal, when payment in full shall be made for the same. Any lots sold as above, that shall not be paid for as provided for in this act, or within one year thereafter, shall be forfeited to the county, and shall be again sold as hereinbefore provided.

SEC. 8. The proceeds of the sales of the aforesaid lots, after deducting the expenses of surveying, advertising, selling, and all other necessary expenses, shall be paid into the county treasury, and shall constitute a fund for the erection of public buildings for the use of the county at the county seat, and shall be used for no other purpose whatever.

SEC. 9. In any county which may collect a building fund by the provisions of this act, it shall be the duty of the tribunal transacting county business, within one year from the time such fund becomes available, to advertise, by publishing in a newspaper at least three months, for bids for building a courthouse, jail and offices for register of deeds and county clerk, if the above specified fund in their judgment, may be sufficient for that purpose.

Said advertisement for bids, to contain plans and specifications for such buildings, and also the time allowed to complete the same. The lowest responsible bid shall in all cases be accepted, and the contracts for such buildings shall be so conditioned, that not more than one half the payment for the same shall be made until the contract shall be completed to the satisfaction of the said tribunal.

SEC. 10. This act shall take effect from and after its passage.

Approved January 26, 1856.

AN ACT

In relation to the application of Susan McEnheimer, for a Divorce from the bonds of Matrimony, from George McEnheimer,

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, The application of Susan McEnheimer to the Legislative Assembly of the Territory of Nebraska for a divorce from the bonds of matrimony from George McEnheimer, shall be, and the same is hereby, referred to the judge of the District Court for the first judicial District of the Territory of Nebraska, for his adjudication and decision.

SEC. 2. The said judge of the District Court is hereby authorized and empowered to hear and determine said application in such manner and under such rules and regulations as he may deem proper to prescribe; and also after hearing the testimony of both parties, if any such shall be produced, make a final decree in reference to the same. And any such final decree or adjudica-

tion shall have the full force and effect of a law of the Territory of Nebraska.

SEC. 3. That the provisions of this act shall apply to the cases of George Bridge and Francis Louisa Bridge, James A. Greenlee and Augusta M. Greenlee, Samuel C. Scotten and Mary Scotten, Jacob Reber and Cathrine Reber, and Gardner Powers and Sarah J. Powers.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 23, 1856.

NEW COUNTIES.

AN ACT

To establish New Counties, and define their boundaries.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the following shall be the boundaries of the respective counties named immediately preceding the description thereof.

SEC. 2. JEFFERSON—Beginning at the south-east corner of township 1, north of range 1 west, of the principal meridian of Nebraska, and extending from thence north to the north-east corner of township 4, north of range 1 west, thence west to the north-west corner of township 4, north of range 4 west; thence south to the south-west corner of township 1, north of range 4 west; thence east to the place of beginning.

SEC. 3. FILLMORE—Beginning at the south-east corner of T 5, N of R 1 W, thence north to the north east corner of T 8, N of R 1 W, thence west, to the north-west corner of T 8, N of R 4 W, thence south to the south-west corner of T 5, N of R 4 W, thence east to the place of beginning.

SEC. 4. YORK—Beginning at the south-east corner of T 9, N of R 1 W, thence north to the north-east corner of T 12, N of R 1 W, thence west to the north-west corner of T 12, N of R 4 W, thence south to the south-west corner of T 9, N of R 4 W, thence east to the place of beginning.

SEC. 5. POLK—Beginning at the south-east corner of T 13, N of R 1 W, thence north to the north-east corner of T 16, N of R 1 W, thence west to the north-west corner of T 16, N of R 4 W, thence south to the south-west corner of T 13, north of R 4 W, thence east to the place of beginning.

SEC. 6. MONROE—Beginning at the south-east corner of T 17, N of R 1 W, thence north to the north-east corner of T 20, N of R 1 W, thence west to the north-west corner of T 20, N of R 4 W, thence south to the south-west corner of T 17, N of R 4 W, thence east to the place of beginning.

SEC. 7. MADISON—Beginning at the south-east corner of T 21, N of R 1 W, thence north to the north-east corner of T 24, N of R 1 W, thence west to the north-west corner of T 24, N of R 4 W, thence south to the south-west corner of T 21, N of R 4 W, thence east to the place of beginning.

SEC. 8. PIERCE—Beginning at the south-east corner of T 25, N of R 1 W, thence north to the middle of the main channel of the Missouri River, thence up said channel to the line dividing ranges 4 and 5 west, thence south to the south-west corner of T 25, N of R 4 W, thence east to the place of beginning.

SEC. 9. JONES—Beginning at the south-east corner of T 1, N of R 4 E, thence north to the north-east corner of T 4, N of R 4 E, thence west to the north-west corner of T 4, N of R 1 E, thence south to the south-west corner of T 1, N of R 1 E, thence to the place of beginning.

SEC. 10. SALINE—Beginning at the south-east corner of T 5, N of R 4 E, thence north to the north-east corner of T 8, N of R 4 E, thence west to the north-west corner of T 8, N of R 1 E, thence south to the south-west corner of T 5, N of R 1 E, thence east to the place of beginning.

SEC. 11. GREENE—Beginning at the south-east corner of T 9, N of R 4 E, thence north to the north-east corner of T 12, N of R 4 E, thence west to the north-west corner of T 12, N of R 1 E, thence south to the south-west corner of T 9, N of R 1 E, thence east to the place of beginning.

SEC. 12. BUTLER—Beginning at the south-east corner of T 13, N of R 4 E, thence north to the north-east corner of T 16, N of R 4 E, thence west to the north-west corner of T 16, N of R 1 E, thence south to the south-west corner of T 13, N of R 1 E, thence east to the place of beginning.

SEC. 13. PLATTE—Beginning at the south-east corner of T 17, N of R 4 E, thence north to the north-east corner of T 20, N of R 4 E, thence west to the north-west corner of T 20, N of R 1 E, thence south to the south-west corner of T 17, N of R 1 E, thence east to the place of beginning.

SEC. 14. IZARD—Beginning at the south-east corner of T 21, N of R 4 E, thence north to the north-east corner of T 24, N of R 4 E, thence west to the north-west corner of T 24, N of R 1 E, thence south to the south-west corner of T 21, N of R 1 E, thence east to the place of beginning.

SEC. 15. DIXON—Beginning at the south-east corner of T 25, N of R 5 E, thence north to the middle of the main channel of the Missouri River, thence up said channel until it intersects the range line dividing ranges one east and one west, and thence south to the south-west corner of T 25, N of R 1 E, thence east to the place of beginning.

SEC. 16. GUAGE—Beginning at the south-east corner of T 1, N of R 8 E, thence north to the north-east corner of T 4, N of R 8 E, thence west to the north-west corner of T 4, N of R 5 E, thence south to the south-west corner of T 1, N of R 5 E, thence east to the place of beginning.

SEC. 17. CLAY—Beginning at the south-east corner of T 5, N of R 8 E, thence north to the north-east corner of T 8, N of R 8 E, thence west to the north-west corner of T 8, N of R 5 E, thence south to the south-west corner of T 5, N of R 5 E, thence east to the place of beginning.

SEC. 18. LANCASTER—Beginning at the south-east corner of T 9, N of R 8 E, thence north to the north-east corner of T 12, N of R 8 E, thence west to the

north-west corner of T 12, N of R 5 E, thence south to the south-west corner of T 9, N of R 5 E, thence east to the place of beginning.

SEC. 19. CALHOUN—Beginning at the south-west corner of T 13, N of R 5 E, thence east to the main channel of the Platte River, thence up said channel until it intersects the 4th standard parallel, thence west to the north-west corner of T 16, N of R 5 E, thence south to the place of beginning.

SEC. 20. All acts and parts of acts, conflicting with this act are hereby repealed. This act shall take effect from and after its passage.

Approved January 26th, 1856.

AN ACT

For the charter of a Bank to be located in Omaha City, Douglas county, Nebraska Territory, to be called the Bank of Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Benjamin F. Allen, B. R. Pegram, Hoyt Sherman, Loudon Mullin, Geo. Jennings, Reuben Sypher and F. R. West, their heirs and assigns, are hereby appointed commissioners, and they, or any five of them, are authorized to carry into effect, from and after the passage of this act, the establishment of a Bank to be styled and called the Bank of Nebraska, and to be located at Omaha City, Douglas county, Nebraska Territory; with a capital of one hundred thousand dollars, which may be increased at the will of the stockholders to any amount not exceeding five hundred thousand dollars, to be divided into shares of one hundred dollars each, and the said company, under the above name and style, are hereby declared capable in law of issuing bills, notes, and other certificates of indebtedness; dealing in exchange, and doing all things necessary to the carrying on of a regular and legitimate banking business, and also to buy and possess property of all kinds, and to sell and dispose of the same, to contract and be contracted with, to sue and be sued, to defend and be defended against in all courts of this Territory.

SEC. 2. That the commissioners herein appointed shall have power to cause books to be opened for the subscription of said stock, in such manner, and at such times and places as they, or any five of them, may appoint; that whenever fifty thousand dollars is fully subscribed, then those making such subscription shall have power to choose a Board of Directors, whose duty it shall be to organize said Bank by electing a President, Vice President and Cashier, and that in the election of said directors and officers, each share subscribed, or then held, shall entitle the holder thereof to one vote, which may be given in person or by proxy.

SEC. 3. It shall be the duty of the President, or Vice President, (either of whom shall be competent,) and Cashier to attach their respective names to all bills or notes issued by said Bank to circulate as currency, and that the stockholders shall be each and individually liable for the full and final redemption of such issue, payable at their banking house in gold or silver, and that this charter shall have an existence and be in full force, if faithfully complied with, for the term of twenty-five years from the date of its passage and becoming a law of the Territory.

SEC. 4. The stock of said Bank shall be assignable and transferable according to such rules and under such restrictions as the Board of Directors may

prescribe, who shall have power at all times to make such rules and regulations as may appear for the well being of said Bank, not inconsistent with the Constitution of the United States and the laws of this Territory.

SEC. 5. The Directors of the Bank shall make, or cause to be made through their Cashier, under oath or affirmation, an annual report to the Auditor of the Territory or State, (as the case may be,) a full exhibit of the condition of said Bank, which report shall be published in three newspapers of this Territory by said Auditor.

SEC. 6. This act shall be in force from and after its passage.

Approved January 18, 1856.

AN ACT

To locate a Territorial Road from Brownville to the Kansas line, in the direction of Maryville.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Allen L. Coat, R. J. Whitney, and John W. Hall, be, and they are hereby appointed, commissioners to view and locate a Territorial Road on the most practicable route from Brownville, in Nemaha county, to the Kansas line, in the direction of Maryville on the Big Blue River.

SEC. 2. That said commissioners shall meet at Brownville on or before the first day of May, 1856, and proceed to locate and establish said road, and their compensation shall be three dollars per day for the time actually employed therein.

SEC. 3. That the cost of laying out and establishing said road shall be paid by the respective counties through which said road shall pass: *Provided*, That when the counties are not organized, said expenses shall be paid by the organized counties in equal proportion.

SEC. 4. This act shall take effect from and after its passage.

Approved January 21st, 1856.

AN ACT

To locate a Territorial Road from Kanosha to Salt Creek.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That a Territorial Road shall be located and established as follows: Commencing at Kanosha, in Cass county, on the West bank of the Missouri River, and running westward to Salt Creek.

SEC. 2. Benjamin Williams, Elza Martin, and John Carroll are hereby appointed commissioners to locate said road.

SEC. 3. It shall be the duty of the said commissioners to meet at Kanosha, on the first Monday in June next, or within four months thereafter, and proceed with a competent surveyor and other necessary help to locate said road.

SEC. 4. The said commissioners shall make a report of the location and boundaries of said road, to be subscribed by them, or a majority of them, and cause a copy of the same to be filed in the office of the Register, of each organized county through which said road shall pass—to be done on or before the first day of November next.

SEC. 5. The said commissioners shall receive three dollars per day, each, for their services, and all other reasonable and necessary expenses for surveying and other help which shall be paid equally by the several counties through which said road shall pass, and it shall be the duty of the proper officers of each county to levy and collect by tax and pay the same.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved January 21st, 1856.

AN ACT

To locate a Road from Brownville to Archer.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That A. L. Coot, Strander Froman and E. G. McMillen be, and are hereby appointed Commissioners to view out and locate a Territorial Road from Brownville via Nemaha City to Archer.

SEC. 2. That said commissioners shall meet at Archer, on the first day of May, 1856, or within three months thereafter, and proceed to locate and establish said road, and their compensation shall be three dollars per day for the time actually employed therein.

SEC. 3. The cost of laying out and establishing said road shall be paid equally by the counties through which said road shall pass.

SEC. 4. Said commissioners shall make a report of their doings and furnish a map of the same to each of the probate judges of the counties through which said road shall pass; all of which shall be filed and recorded by the Register in each county.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved January 22d, 1856.

AN ACT

To locate and establish a Territorial Road from Nebraska City to Plattsmouth.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That a Territorial Road shall be located and established as follows: Commencing at Nebraska City, running thence northerly to Wyoming, thence through Kanosha and Rock Bluffs to Plattsmouth.

SEC. 2. Thomas Patterson, J. McF. Hagood and J. H. Cowles are hereby appointed Commissioners to locate said road.

SEC. 3. It shall be the duty of the said Commissioners to meet at Nebraska City, on the first Monday in June next, or within four months thereafter, and proceed with a competent surveyor and other necessary help to locate said road.

SEC. 4. The said Commissioners shall make a report of the location and boundaries of said road, to be subscribed by them or a majority of them, and cause a copy of the same to be filed in the office of the Register of each organized county through which said road shall pass, to be done on or before the first day of November next.

SEC. 5. The said commissioners shall receive three dollars per day each for

their services and all other reasonable and necessary expense for surveying and other help, which shall be paid equally by the several counties through which said road shall pass, and it shall be the duty of the proper officers of each county to levy and collect by tax and pay the same.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved January 22d, 1856.

AN ACT

To locate a Territorial Road from La Platte to Fontenelle.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That a Territorial Road shall be located and established as follows; commencing at La Platte, and running by the most direct route to Fontenelle in Dodge county, by way of Elk Horn City.

SEC. 2. Charles E. Watson, Thomas Gibson and G. B. Tunison, are hereby appointed commissioners to view and locate said road.

SEC. 3. It shall be the duty of the said commissioners, to meet at the house of Charles E. Watson, in La Platte, on the first Monday in April, or within four months afterwards, and proceed with competent surveyors to locate said road.

SEC. 4. The said commissioners shall make a report of the location and boundaries of said road to be subscribed by them, or a majority of them, and cause a copy of the same to be filed in the office of the register of each county, through which said road shall pass, to be done on or before the first day of November next.

SEC. 5. The said commissioners shall receive three dollars per day each, for their services, and all other reasonable and necessary help, which shall be paid equally by the several counties through which said road shall pass, and it shall be the duty of the proper officers of each county, to levy and collect a tax to defray all such necessary expense and pay the said commissioners so soon as practicable, after the survey and the plat of said road are filed in the proper offices.

SEC. 6. This act to take effect from and after its passage.

Approved January 26, 1856.

AN ACT

To incorporate the Nemaha University at Archer.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Thomas B. Froman, Andrew Trebble, Rev. Pleasant Rogers, John C. Miller, C. Bobst, J. C. Lincoln, A. D. Kirk, J. L. Sharp, C. McDonald, Bethel Allen, Charles Downing and Lewis Misplais and their successors, be and are hereby created a body politic and corporate, by the name and style of the Nemaha University at Archer.

SEC. 2. For the present, the aforesaid individuals or any five of them, shall constitute the Board of Trustees for said institution.

SEC. 3. The object of said corporation shall be the promotion of the general interests of education, and to qualify students to engage in the several pursuits and employments of society, and to discharge honorably and usefully the various duties of life.

SEC. 4. The corporate powers hereby created, shall be such only as are essential and useful in the attainment of said object, and such as are usually conferred on similar bodies corporate (viz.): to have perpetual succession, to make contracts, to sue and be sued, to plead and be impleaded, to grant and receive by its corporate name, to do all other acts the same as natural persons, to accept, to acquire, purchase or sell property, real, personal or mixed, in all lawful ways, to use, employ, manage and dispose of all such property and money belonging to such corporation, in such manner as shall seem to the trustees best adapted to promote the objects afore mentioned, to have a common seal, and to alter the same at pleasure, to make such by-laws for its regulation as shall not conflict with the Constitution and laws of the United States, or of the Territory of Nebraska, and to confer [on] such persons, as shall be considered worthy, such collegiate and honorary degrees as the nature and the title of the institution indicates.

SEC. 5. The trustees of the corporation shall have authority from time to time to prescribe and regulate the course of studies to be pursued in said institution, and in the preparatory department attached thereto, to fix the rate of tuition, room-rent and college expenses, to appoint instructors, and such other officers and agents as may be necessary in managing the concerns of the institution, to define their powers, duties and employments, to fix their compensation, to displace and remove either the instructors, officers or agents, as said trustees shall deem to be for the best interest of said institution, and shall have power to fill all vacancies among said instructors, officers and agents, to purchase lands, erect suitable buildings, to purchase books and chemical, and philosophical apparatus, and other suitable means of instruction.

SEC. 6. The trustees shall have power to remove any of their number from office, for dishonorable or criminal conduct: *Provided*, That no such removal shall take place without giving to such trustee notice of the charges preferred against him, and an opportunity to defend himself before the board, nor unless two-thirds of the whole board of trustees shall concur in such removal. The trustees shall have power in cases of removal from office by death, resignation or otherwise, of any of their number, to fill all vacancies until the next regular election, as hereinafter prescribed. A majority of trustees shall constitute a quorum to do business.

SEC. 7. This corporation shall have power and authority to raise a capital stock in shares of fifty dollars each to the amount of one hundred thousand dollars exclusive of such lands as may be given by donation, bequest or otherwise, to be used as a college fund and devoted exclusively to the purposes of education, and that so soon as two hundred shares or ten thousand dollars of said stock shall be subscribed, the stockholders will be hereby authorized to organize and locate said institution.

SEC. 8. The trustees shall faithfully apply all funds by them collected, or to be collected hereinafter, according to their best judgment in purchasing land, erecting suitable buildings, in supporting the necessary instructors, officers and agents, and in procuring books and other necessary apparatus to aid in the promotion of sound learning in the institution, provided that in cases of any donation, devise or bequest shall be made for particular purposes accordant with the objects of the institution, and the trustees shall accept the same. Any such donation, devise or bequest shall be applied in conformity with the expressed conditions of the donor or deviser, provided also, that lands donated or devised as aforesaid shall be sold or disposed of as required by the ninth section of this act.

SEC. 9. The lands, tenements and hereditaments to be held in perpetuity

in virtue of this act by this corporation, shall not exceed one thousand acres : *Provided, however,* that if any donations, grants, or devises in lands, shall be made from time to time to this corporation, over and above one thousand acres, which may be held in perpetuity as aforesaid, the same may be received and held by said corporation for the period of ten years from the date of such donation, grant or devise, at the end of which time if the said lands over and above the one thousand acres shall not have been sold by said corporation, then in that case the said lands so donated, granted or devised shall revert to the donor, grantor or devisor if their heirs shall so demand.

SEC. 10. The treasurer of said institution always, and all other agents when requested by the trustees, before entering upon the duties of their appointment, shall give bonds for the security of the corporation in such penal sum and with such security as the board of trustees shall approve, and all process against said corporation shall be by summons, and service of the same shall be by leaving an attested copy with the treasurer of said institution at least thirty days before the return-day thereof.

SEC. 11. The trustees of said institution shall not exceed fifteen, exclusive of the President, principal or presiding officer of said institution, who shall be *ex-officio* a member of the board of trustees ; said trustees shall be elected annually on the first Saturday in September, at Archer in Richardson county, under the direction of such persons as a majority of the trustees for the time being shall appoint by resolution, to be entered on the minutes.

SEC. 12. All elections shall be held by ballot, and may be given in person or by proxy, allowing one vote for each share of the capital stock, and such person at such election having the greatest number of votes, shall be trustee of said institution, and if at any election any two or more out of the fifteen who have the greatest number of votes, shall have an equal number of votes so as to leave their election undecided, then the trustees who have been duly elected, shall proceed by ballot and by a plurality determine which of said persons so having an equal number of votes shall be trustees so as to complete the whole number.

SEC. 13. The trustees shall elect a President and Secretary of the board of Trustees from among their own body, and also appoint some suitable person the treasurer of said institution, to serve for the term of one year, and until his successor shall be appointed.

SEC. 14. The said institution and its preparatory department shall be open to all denominations of Christians, and the profession of any particular religious faith shall not be required of those who become students. All persons, however, who are idle or vicious, or whose characters are immoral may be suspended or expelled.

SEC. 15. All the real or personal estate belonging, or which may hereafter belong to said corporation, shall be exempted from taxation for any and all purposes whatever.

SEC. 16. This act shall take effect from and after its passage.

Approved January 25th, 1856.

AN ACT

To authorize William Clancy and P. C. Sullivan to keep and run a Ferry across the Missouri river at De Soto, in the county of Washington, and Territory of Nebraska.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That William Clancy, P. C. Sullivan, their associates, heirs and assigns, shall have, for the period of twenty years from the passage of this act, the exclusive privilege of keeping a ferry on the Missouri river, for the purpose of crossing the same at the city of De Soto, in the county of Washington, and Territory of Nebraska.

SEC. 2. That said exclusive right shall extend a distance of five miles below said city of De Soto, and the same distance above said city on the Missouri river; and it shall be unlawful for any person or persons to keep or run a ferry of any description within said limits.

SEC. 3. That the said William Clancy and P. C. Sullivan shall, within six months from the passage of this act, place or cause to be placed at said point a good and sufficient flat-boat for the purpose of crossing all persons or property, at all times, when the said Missouri river is passable.

SEC. 4. That the said William Clancy and P. C. Sullivan shall, within three months from the passage of this act, file with the Probate Judge of Washington county a good and sufficient bond, with one or more sureties, to be approved by said Judge, for the faithful performance of all the requirements of this act and duties as such ferryman.

SEC. 5. That the said William Clancy and P. C. Sullivan shall be required to cross all ministers of the Gospel who reside in this Territory free of charge.

SEC. 6. That all acts or parts of acts contravening this act shall be, and the same is hereby, repealed: *Provided*, nothing in this act shall be so construed as to infringe upon any charter heretofore granted: *Provided*, the provisions of said charter heretofore granted, shall be faithfully complied with.

SEC. 7. This act shall take effect and be in force from and after the tenth day of March, one thousand eight hundred and fifty-six.

Approved January 26, 1856.

AN ACT

To charter the Nemaha Valley Bank.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Col. Clement Brown, J. S. Brown, B. B. Frozier, Volney Brown, Richard M. Waterman, Richard Brown, their heirs and assigns are hereby appointed commissioners, and they, or any five of them, are authorized to carry into effect from and after the passage of this act, the establishment of a Bank, to be styled and called the Nemaha Valley Bank, and to be located at Brownville, Nemaha county, Nebraska Territory, with a capital stock of fifty thousand dollars, which may be increased at the will of the stockholders to any amount not exceeding five hundred thousand dollars, to be divided into shares of one hundred dollars each. And the said company, under the above name and style, are hereby declared capable, in law, of issuing notes, bills,

and other certificates of indebtedness, dealing in exchange, and doing all things necessary to the carrying on of a regular and legitimate banking business, and also to buy and possess property of all kinds, and to sell and dispose of the same, to contract and be contracted with, to sue and be sued, to defend and be defended against in all courts of this Territory.

SEC. 2. That the commissioners herein appointed shall have power to cause books to be opened for the subscription of said stock in such manner and at such times and places as they or any five of them may appoint; that whenever twenty-five thousand dollars is fully subscribed then those making such subscription shall have power to choose a Board of Directors, whose duty it shall be to organize said bank, by electing a President, Vice President and Cashier, and that, in the election of said directors and officers, each share subscribed or then held, shall entitle the holder thereof to one vote, which may be given in person or by proxy.

SEC. 3. It shall be the duty of the president or vice president, (or either of them shall be competent) and cashier to attach their respective names to all bills or notes issued by said bank to circulate as currency, and the stockholders shall be each individually liable for the full and final redemption of such issue, payable at their banking house in gold or silver, and that this charter shall have an existence and be in force if faithfully complied with, for the term of twenty years from the date of its passage, and becoming a law of the Territory.

SEC. 4. The stock of said bank shall be assignable and transferable according to such rules and under such restrictions as the board of directors may prescribe, who shall have power at all times to make such rules and regulations as may appear for the well-being of said bank, not inconsistent with the constitution and laws of the United States and of this Territory.

SEC. 5. The directors of the bank shall make, or cause to be made through their cashier, under oath or affirmation, an annual report to the Auditor of the Territory or State, as the case may be, a full exhibit of the condition of said bank, which report shall be published in three newspapers of this Territory by said Auditor.

SEC. 6. This Act shall be in force from and after its passage.

Approved January 18, 1856.

AN ACT

To Locate and Establish a Territorial Road from the Platte River to Nebraska City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That a Territorial road shall be located and established as follows: Commencing on the south bank of the Platte River, near the La Platte Ferry Company landing, and running thence southerly, via Three Grove to Nebraska City.*

SEC. 2. Levi G. Todd, G. W. Hunt, and J. H. Cowles are hereby appointed commissioners, to view and locate said road.

SEC. 3. It shall be the duty of the said commissioners to meet at Nebraska City on the first Monday in April next, or within four months thereafter, and proceed with a competent surveyor and other necessary help to locate said road.

SEC. 4. The said commissioners shall make a report of the location and boundaries of said road to be subscribed by them or a majority of them, and

cause a copy of the same to be filed in the office of the register of such organized county, through which said road shall pass, to be done on or before the first day of November next.

SEC. 5. The said commissioners shall receive three dollars per day each, for their services and all other reasonable and necessary expenses for surveying and other help, which shall be paid equally by the several counties through which said road shall pass; and it shall be the duty of the proper officers of each county to levy and collect a tax, to defray all such necessary expense, and pay the same to the said commissioners so soon as practicable after the survey and plat of said road are filed in the proper offices.

SEC. 6. This act to take effect from and after its passage.

Approved January 22, 1856.

AN ACT

To lay out and establish a Territorial Road from Omaha in Douglas County,
"via" Elkhorn City, to Fontenelle in Dodge County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That three commissioners be, and are hereby appointed to lay out and establish a Territorial road from Omaha in Douglas county, by way of Elkhorn City, to Fontenelle in Dodge county.

SEC. 2. That said commissioners, or a majority of them, shall meet in Omaha city, on or before the first Monday in July next, and proceed to lay out, locate, and establish a Territorial road in accordance with this act.

SEC. 3. That John Evans, A. F. Salisbury, and C. H. Downs be, and are hereby appointed said commissioners, with power to employ all necessary help in the locating of said road. And further, that said commissioners be paid at the rate of three dollars per day for their services while engaged in making said location.

SEC. 4. That all necessary expenses incurred in carrying out the provisions of this act be paid out of the treasury of the counties through which the road shall pass.

SEC. 5. That this act shall take effect from and after its passage.

Approved January 21, 1856.

AN ACT

To locate and establish a Territorial Road from Tekamah in Burt County, to
Fontenelle in Dodge County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That B. R. Folsom and W. B. Beck of Burt county, and E. G. McNeely of Dodge county, be, and they are hereby appointed commissioners to locate and establish a Territorial road from Tekamah in Burt county, to Fontenelle in Dodge county.

SEC. 2. That said commissioners shall meet on or before the first Monday in August, 1856, at Tekamah in Burt county, and proceed to lay out said road, in accordance with the provisions of this act.

SEC. 3. That said commissioners shall receive three dollars per day each, for

their services while engaged in laying out said road, and shall have power to employ all necessary help in the surveying of said road.

SEC. 4. That all reasonable expenses incurred in accordance with the provisions of this act, shall be defrayed, in equal proportions, by the counties through which the said road shall run, as soon as a sufficient sum be in the treasury of said counties.

SEC. 5. That said commissioners shall, within thirty days after locating said road, make a report of their doings, and furnish a map of the road to the Probate Judge of the aforesaid counties, all of which shall be recorded in the register's office thereof.

SEC. 6. That this act shall take effect from and after its passage.

Approved January 26, 1856. —

AN ACT

To locate a Territorial Road.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That a Territorial Road shall be located and established as follows: From Omaha City to the Platte River ferry landing in *La Platte*, by the way of Bellevue and the mouth of the Papillion creek.

SEC. 2. Alexander Davis, Robert Hamilton and William Larimer, Jr., are hereby appointed commissioners to view and locate said road.

SEC. 3. It shall be the duty of said commissioners to meet at Omaha City, on the first Monday in April next, or within one month thereafter, and proceed with a competent surveyor and other necessary help to locate said road.

SEC. 4. The said commissioners shall make a report of the location and boundaries of said road, to be subscribed by them or a majority of them, and cause a copy of the same to be filed in the office of the Register of Douglas county, through which said road passes, on or before the first Monday of August next.

SEC. 5. The said commissioners shall receive three dollars per day each for their services, and all other reasonable and necessary expenses for surveying, &c., which shall be paid by Douglas county as soon as practicable after the survey and plat of said road, are filed in said Register's office.

SEC. 6. This act to take effect from and after its passage.

Approved January 22d, 1856.

AN ACT

To locate and establish a Territorial Road from the Little Nemaha River to the Kansas Line.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That William Trammel, Louis Misplay, and Levi Dodge, of Richardson county, or a majority of them, be, and they are hereby appointed Commissioners to lay out, locate and establish a Territorial Road, commencing at the Little Nemaha river, at or near where the military road crosses the same, near Dr. Jerome Hoover's mill, and running thence southerly on the most

direct and feasible route by way of the Maple Grove ford, on Muddy creek; thence to the ford on the Grand Nemaha river, below the Falls, known as the Singleton Ford; thence to the Kansas line.

SEC. 2. Said commissioners shall also locate and establish a road from the Maple Grove ford aforesaid, to the town of Salem, in Richardson county, and that upon the nearest and most suitable route.

SEC. 3. Said commissioners shall meet at Dr. Hoover's mill, on Little Nehama, on the first Monday of April next, or within two months thereafter, and proceed from thence to examine the route of said road, and to locate the same.

SEC. 4. Said commissioners shall have power to employ a competent surveyor, and all necessary help in laying out and locating said road, and to measure and mile-mark the same. Each commissioner shall receive three dollars per day for the time actually engaged therein, which, with all other necessary expenses, shall be paid out of any money in the treasury of Richardson county, not otherwise appropriated.

SEC. 5. It shall be the duty of the surveyor, who may be appointed by said commissioners, to make out a plat of said road and deposit the same in the office of the Clerk of the Probate Court of Richardson county, and such plat shall be filed by said clerk.

SEC. 6. This act shall be in force from and after its passage.

Approved January 22d, 1856.

AN ACT

To locate and establish a Territorial Road from Florence, in Douglas County, to Elkhorn City, in said county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That G. W. Dodge, George Howe and Levi Harsh, of Douglas county, be, and they are hereby appointed Commissioners to locate and establish a Territorial Road from Florence to Elkhorn City, in said county.

SEC. 2. That said commissioners, or any two of them, shall meet on or before the first Monday in September next, at Florence, and proceed to lay out said road in accordance with the provisions of this act.

SEC. 3. That said commissioners shall receive three dollars per day each, for their services while engaged in laying out said road, and shall have power to employ all necessary help in the surveying and making of said road.

SEC. 4. That all reasonable expenses incurred in accordance with the provisions of this act shall be defrayed by said Douglas county out of any money in the treasury thereof not otherwise appropriated.

SEC. 5. That said commissioners shall, within thirty days after locating said road, make a report of their doings, and furnish a map of said road to the probate judge of the aforesaid county, all of which shall be filed and recorded in the office of the Register thereof.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved January 26th, 1856.

AN ACT

To locate a Road from Omaha City to Dakotah.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That a Territorial Road shall be located and established as follows: From Omaha City to Dakotah, by way of Florence, Ft. Calhoun, Desoto, Cuming City and Tecama.

SEC. 2. A. F. Salisbury, Wm. B. Beck; and P. C. Sullivan, are hereby appointed commissioners to view and locate said road.

SEC. 3. It shall be the duty of the said commissioners to meet at Omaha on the 1st Monday of April next, or within sixty days afterwards, and proceed with a competent surveyor to locate said road.

SEC. 4. The said commissioners shall make a report of the location and boundaries of said road, to be subscribed by them, or a majority of them, and cause a copy of the same to be filed in the office of the Register of each county through which said road shall pass, to be done on or before the first day of September next.

SEC. 5. The said commissioners shall receive three dollars per day, each, for their services, and all other reasonable and necessary expense for surveying, &c., which shall be paid equally by the several counties through which said road shall pass, and it shall be the duty of the proper officers of each county to levy and collect a tax to defray all such necessary expense, and pay the same to the said commissioners so soon as practicable after the survey and the plats of said road are filed in the proper offices.

SEC. 6. This act to take effect from and after its passage.

Approved January 21st, 1856.

AN ACT

To prevent Trespass on School Lands.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That whenever any Justice of the Peace of any county shall become satisfied, by a written complaint under oath, that trespass or waste, by cutting wood or carrying it away, or in any other manner, has been within six months then past, or is then being committed on any School Lands, situated in or belonging to said county, it shall be the duty of said Justice of the Peace to issue a warrant to the sheriff of his county, or some other officer, directing said sheriff, or officer, to arrest and bring before him, forthwith, the person or persons charged in said warrant with having committed trespass or waste, as aforesaid, or any person then committing the same: *Provided*, That this section shall not be construed as authorizing a warrant for trespass to be issued against any person for cutting or using timber for the improvement of said School Land.

SEC. 2. It shall be the duty of the Justice of the Peace, at the time of issuing said warrant, to issue a subpoena to any person or persons, who may be cognizant of trespass or waste, committed in violation of this act, requiring such person or persons to appear before him forthwith, to testify in relation to the matter; which subpoena shall be served by the sheriff of the county, or some other officer, deputed by the Justice of the Peace.

SEC. 3. On the appearance of the person or persons arrested under said warrant, the Justice of the Peace shall proceed to hear testimony in the case; and if the person so arrested shall be found guilty of having committed trespass or waste, contrary to the provisions of this act, he shall be adjudged to pay a fine, not exceeding one hundred dollars, and costs of suit, or to be imprisoned in the county jail for a period not exceeding sixty days; or to be both fined and imprisoned, at the discretion of said Justice: *Provided*, That any person so arrested, shall be entitled to be tried by a jury of six disinterested residents of the county, if he require it.

SEC. 4. All fines so inflicted, shall inure to the use of Schools, and shall be paid to the person having charge of the school money in the county, after deducting from the same the amount of costs which may have been paid by the county, in cases of failure to sustain any previous action commenced under this act; and the costs and prosecution under this act shall be the same as the costs in similar prosecutions before a Justice of the Peace.

SEC. 5. The County Court shall pay out of the County Treasury, the costs of all suits, in cases of failure to sustain an action commenced under this act, which may be refunded as above provided.

SEC. 6. This act shall take effect from and after its passage.

Approved January 26th, 1856.

AN ACT

To authorize Jerome Hoover and Henry Hoover to erect a Mill-dam across the Little Nemaha River.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Jerome Hoover and Henry Hoover, be, and they are hereby, authorized to erect and constantly keep a mill-dam across the Little Nemaha River, at or near the old government crossing in Nemaha county.

SEC. 2. The said Jerome Hoover, Henry Hoover, their heirs and assigns, shall have the perpetual right to keep a dam on said river at the point designated in section one of this act, to the height of ten feet above low water mark, so as to propel mills or any other machinery that said Hoovers, or their heirs or assigns, may want to erect.

SEC. 3. No person shall be allowed by law to build or erect any dam below the point designated in this act, so as to interfere with old rights granted in this act to J. Hoover and H. Hoover, their heirs and assigns.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved January 26th, 1856.

AN ACT

To incorporate the Washington College at Cuming City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That B. R. Folsom, J. C. Mitchell, T. B. Cuming, M. W. Izard, P. G. Cooper, Wm. B. Hail, John C. Campbell, and J. B. Radford, and their successors, be and are hereby created a body politic and corporate,

by the name and style of the Washington College, to be located at Cuming City, Nebraska Territory.

SEC. 2. For the present the aforesaid individuals shall constitute the board of trustees for said Institution.

SEC. 3. The objects of said corporation shall be the promotion of the general interests of education, and to qualify students to engage in the several pursuits and employments of society, and to discharge honorably and usefully the various duties of life.

SEC. 4. The corporate powers hereby created, shall be such only as are essential or useful in the attainment of said object, and such as are usually conferred on similar bodies corporate, *viz* :

To have perpetual succession, to make contracts, to sue and be sued, to plead and be impleaded, to grant and receive by its corporate name, to do all other acts the same as natural persons, to accept, acquire, purchase or sell property, real, personal or mixed, in all lawful ways to use, employ, manage and dispose of all such property and money belonging to said corporation, in such manner as shall seem to the trustees best adapted to promote the objects aforementioned, to have a common seal and to alter the same at pleasure, to make such by-laws for its regulation as shall not conflict with the Constitution and Laws of the United States or of the Territory of Nebraska, and to confer on such persons as shall be considered worthy, such collegiate and honorary degrees as the nature and title of the institution indicate.

SEC. 5. The trustees of the corporation shall have authority from time to time, to prescribe and regulate the course of studies to be pursued in said institution and in the preparatory departments attached thereto, to fix the rates of tuition, room rent and college expenses, to appoint instructors and such other officers and agents as may be necessary in managing the concerns of the institution, to define their powers, duties and employments, to fix their compensation, displace and remove either of the instructors, officers or agents, as said trustees shall deem to the interest of the said institution, to require to fill all vacancies among said instructors, officers and agents, to purchase lands, erect suitable buildings, to purchase books and chemical and philosophical apparatus and other suitable means of instruction.

SEC. 6. The trustees shall have power to remove any trustee from the office of trustee for any dishonorable or criminal conduct: *Provided*, That no such removal shall take place, without giving such trustee notice of the charges exhibited against him, and an opportunity to defend himself before the board, nor unless two-thirds of the whole number of trustees shall concur in such removal. The trustees shall also have power in cases of a removal from office, death, resignation or a removal out of the Territory (or State) of any one of their number, to fill such vacancy occasioned by such removal, death, resignation or removal out of the Territory (or State,) to serve until the next regular election as hereinafter provided.

A majority of trustees shall be sufficient to constitute a quorum to do business.

SEC. 7. This corporation shall have power and authority to raise a capital stock in shares of fifty dollars each, to the amount of one hundred and fifty thousand dollars, exclusive of such sums as may be given by donation, bequest or otherwise, to be used as a college fund, and devoted exclusively to the purposes of education, and that so soon as two hundred shares, or ten thousand dollars of said stock shall be subscribed, the stockholders will be hereby authorized to organize and locate said institution.

SEC. 8. The trustees shall faithfully apply all funds by them collected or to

be located hereinafter according to their best judgment, in purchasing land, erecting suitable buildings, in supporting the necessary instructors, officers and agents, in procuring books, maps, charts, globes, philosophical and chemical apparatus, to aid in the promotion of general learning in the institution: *Provided*, That in case any donation, devise or bequest, shall be made for particular purposes, accordant with the objects of the institution, and the trustees shall accept the same, every such donation, devise or bequest shall be applied in conformity with the express condition of the donor or devisor: *Provided, also*, That the lands donated, or devised as aforesaid, shall be sold or disposed of as required by the 9th section of this act.

SEC. 9. The lands, tenements and hereditaments, to be held in perpetuity in virtue of this act, by this corporation shall not exceed one thousand acres: *Provided, however*, That if donations, grants or devises, in lands shall be made from time to time for this corporation over and above one thousand acres, which may be held in perpetuity as aforesaid, the same may be received and held by said corporation, for the period of ten years from the date of such donation, grant or devise, at the end of which time, if the said lands over and above the one thousand acres shall not have been sold by said corporation, then in that case the said lands so donated, granted or devised, shall revert to the donor, grantor, or the heirs of the devisor of the same, if the donor, grantor or the heirs of the same shall so demand.

SEC. 10. The treasurer of said institution always, and all other agents when required by the trustees, before entering upon the duties of their appointment, shall give bonds for the security of the corporation in such penal sum and with such securities as the Board of Trustees shall approve, and all process against said corporation shall be by summons, and service of the same shall be by leaving an attested copy with the treasurer of said institution, at least thirty days before the return-day thereof.

SEC. 11. The trustees of said institution shall not exceed fifteen, exclusive of the president, principal or presiding officer of said institution, who shall be *ex-officio* a member of the board of trustees. Said trustees shall be elected annually on the first Saturday in October, at Fontenelle; in Dodge county, under the direction of such persons as a majority of the trustees for the time being shall appoint by resolution, to be entered on the minutes.

SEC. 12. All elections shall be by ballot, and may be given in person or by proxy, allowing one vote for each share of the capital stock, and such persons, at said election, having the greatest number of votes, shall be trustees of said institution; and if at any election any two or more out of the fifteen who have the greatest number of votes, shall have an equal number of votes, so as to leave their election undecided, then the trustees who have been duly elected shall proceed by ballot and by a plurality determine which of said persons so having an equal number of votes shall be trustee or trustees so as to complete the whole number.

SEC. 13. The trustees shall elect a president and secretary of the board of trustees from among their own body, and also appoint some suitable person the treasurer of said institution, to serve for the term of one year, and until his successor shall be appointed.

SEC. 14. The said institution and its preparatory department shall be open to all denominations of Christians, and the profession of any particular religious faith shall not be required of those who become students. All persons however, who are idle or vicious, or whose characters are immoral may be suspended or expelled.

SEC. 15. All the real or personal estate belonging, or which may hereafter

belong, to said corporation, shall be exempted from taxation for any and all purposes whatever.

SEC. 16. This Act shall take effect from and after its passage.

Approved January 26, 1856.

AN ACT

To change the north line of Douglas County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the north line of Douglas county be, and the same is hereby, established on the fourth parallel.

SEC. 2. That all acts or parts of acts conflicting with this act be and the same are hereby repealed.

SEC. 3. This Act shall take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

For locating, opening, repairing, and changing County Roads.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the locating, opening, and keeping in repair of all county roads, not within the limits of any incorporated city or town, and the opening, making, and keeping in repair of all Territorial roads, shall be under the jurisdiction and control of the board of county commissioners of the county in which the same may be situated.

SEC. 2. The corporate authorities of any incorporated city or town shall have exclusive jurisdiction over all streets, roads, bridges and ferries within their corporate limits, and no inhabitant of any incorporated city or town shall be assessed on any road tax, except by the corporate authorities of the same.

SEC. 3. When any inhabitants of any county desire the opening of a new road, or the change or discontinuance of any road as hereby established, they may petition the board of commissioners for the county to grant such location, change, or discontinuance; and on a petition as above being presented to said board, signed by at least ten householders of the county, during such location, change, or discontinuance, it shall be the duty of said board at their next regular session, to fix a time when they will view the premises, and a time and place, when and where they will hear the parties interested in the case; public notice of which time and place, shall be given, by posting up notices on the court-house doors, and two or more other places in the county, and in one or more places in any adjoining county, the inhabitants of which, have any direct interest in the road in question; the aforesaid notice shall be posted up at least thirty days before the time set as aforesaid.

SEC. 4. If, upon viewing the premises, and hearing the parties interested as hereinbefore provided, said commissioners shall be satisfied that the public good requires such road, it shall be their duty to issue their warrant to some competent surveyor, authorizing and requiring him to survey and mark out such road, by such stakes, stones, or other marks as they may deem necessary, and giving all

necessary directions concerning the same, specifying the beginning, end, and such points on the line, and other general directions they may think requisite.

The warrant to the surveyor as above, shall be under their hand and seal, if they have one, requiring him to perform the aforesaid duty within a specified time, and to deposit a plat of the same with a copy of the field notes of the survey in the office of the county clerk, within thirty days from the time of completing said survey.

SEC. 5. In case of any petition for the location, change, or discontinuance of any road, setting forth that it is expedient to have such road extend into an adjoining county, or to connect with any road through such county, it shall be the duty of the board receiving such petition, to notify the board of commissioners of the county interested, of the fact, and requesting a conference on the subject; and it shall be the duty of the said board notified, to respond, by appointing a place and time for holding such conference, of which notice shall be given as hereinbefore provided, in the case of the location of roads.

If, upon such conference, the two county boards shall agree upon the point of junction, each board shall proceed with the portion of said road within their respective counties as hereinbefore provided; if they cannot agree, they may leave the matter to an umpire or to arbitrators at their election, and the award of such umpire or arbitrators shall be final on the point of junction.

SEC. 6. All public roads shall be surveyed, opened, made passable, and kept in repair, forty feet wide; and all bridges on any public road shall be at least sixteen feet wide, with a good and sufficient railing on each side, three feet high, the whole length of the bridge.

SEC. 7. To provide a fund for opening, making, and keeping roads in repair, there shall be laid upon each able-bodied male citizen, within any organized county, not an inhabitant of any incorporated city or town, between the ages of twenty-one and sixty years, a poll-tax of two days' labor, to be expended upon the public roads, under the direction of a supervisor, as hereinbefore provided.

And to provide a fund for building bridges, and the payment of expenses of surveying roads, and any other expenses incurred on account of roads, there shall be laid upon all property taxable by law, not in an incorporated city or town, such tax not exceeding two mills on the dollar, as the board of county commissioners shall deem necessary, to be assessed and collected as other county taxes are: *Provided*, that said board of commissioners may accept so much of the same, in labor or material, as they may deem most for the interest of the county.

SEC. 8. It shall be the duty of the county commissioners or tribunal transacting county business, within three months after the passage of this act, to divide their several counties into so many road districts, as they shall deem most expedient; and to appoint some suitable person, who shall be a householder and tax-payer in his district, as supervisor of roads, to hold his office for the term of one year.

SEC. 9. Supervisors thus appointed, shall qualify, by taking an oath faithfully to perform their duties, and giving bond to the county in such sum as the said county tribunal shall think requisite, within thirty days after receiving such appointments.

SEC. 10. The tribunal transacting county affairs, shall furnish each supervisor with a list containing the names of all persons in his district, from whom road labor is due, on or before the first day of June in each year; and said supervisor shall have power, and it shall be his duty, to call upon all persons named in said list, to work upon the roads, or provide a substitute at such

times as he may deem best under his direction, giving them at least seven days' notice, by serving upon each a written notice to that effect.

SEC. 11. If any person named in the list above mentioned, shall refuse or neglect to comply with said requisition, or to provide a substitute before the first day of August in each year, the said supervisor is hereby authorized to collect the value thereof in money from said persons, at the rate of one dollar and fifty cents for a days' work; for this purpose, the supervisor is clothed with the same powers that the county treasurer has to collect the county taxes.

SEC. 12. Any money collected by a supervisor by the provisions of the preceding section, shall be expended by him on the roads in his district.

SEC. 13. The property road tax shall be expended under the direction of the county tribunal, for the following purposes :

First. For paying the expenses of laying out county roads.

Second. For building bridges.

Third. For compensation to surveyors of roads, at the rate of two dollars per day, for every day they may be employed in the duties of their office, beyond their road dues, and

Fourth. For payment of damages for right of way.

SEC. 14. When any damage shall be demanded by any person for right of way for a county road, if the county tribunal shall think the same not exorbitant, they are authorized to order the same to be paid out of the county road funds ; if exorbitant damages are demanded, it shall be their duty to appoint three disinterested persons to appraise said damages, and their award shall be paid to said claimant in full satisfaction for such damages: *Provided*, any claimant aggrieved may have an appeal to the District Court of his district, if such appeal shall be entered within thirty days after said award is made and the requisite bond given.

Approved January 26, 1856.

AN ACT.

To Incorporate the Town of Archer in Richardson County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the town site claimed by the Archer company, upon which the town of Archer is located, in Richardson county, together with all additions that may be hereafter made according to law, is hereby declared to be a town by the name and style of the town of Archer.

SEC. 2. The said town is hereby made a corporate body and is invested with all the privileges and attributes of a municipal corporation, and may elect such officers and pass such laws, ordinances and rules for the government and benefit of said town, as shall from time to time be deemed expedient and proper, not inconsistent with the Constitution of the United States, and in accordance with the laws of the Territory of Nebraska.

SEC. 3. Whenever a majority of the legal voters of said town shall signify in writing to the Judge of Probate, of said county, that they desire an organization and an election of town officers, the said Judge shall within ten days thereafter give a written or printed notice, which he shall cause to be posted in at least three of the most public places in said town, giving ten days' notice of a meeting of the legal voters of said town, and stating the object of said meeting.

SEC. 4. The Judge of Probate shall preside at said meeting, at which time and place such officers as shall be deemed necessary and proper for the government of said town, shall be elected by a majority of the legal voters aforesaid, and said meeting may adjourn from time to time until said object shall be effected.

SEC. 5. Immediately after the signification of the legal voters as provided in section the first, the said Judge of Probate shall give notice, to be posted as provided in section three of this act, for the election of such officers as are provided for by said meeting, which election shall be the first organization of said town, and thereafter such offices may be abolished or new offices created as the majority of the legal voters may from time to time by their vote direct at any town election held in said town.

SEC. 6. This act to take effect and be in force from and after its passage.

Approved January 25th, 1856.

AN ACT

To Repeal an Act entitled "An Act to restrain Sheep and Swine from running at large" so far as it relates to Otoe and Pawnee Counties.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That an act entitled "An Act to restrain Sheep and Swine," be and hereby is repealed so far as relates to Otoe and Pawnee counties.

SEC. 2. This act to take effect from and after its passage.

Approved January 25th, 1856.

AN ACT

To defray the expenses of taking the Census of Nebraska.

Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That the Territorial Auditor be and he is hereby authorized and required to examine, audit and allow the accounts, and to issue warrants on the Territorial Treasurer in favor of the United States' Marshal and his deputies for their respective services, at the rate of five dollars per day, while engaged in taking the census of this Territory, as authorized by "an Act to provide for taking the census, making apportionment, holding elections and other purposes," approved March 16th, 1855.

Approved January 26th, 1856.

AN ACT

To incorporate the town of Kanosha.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the town site claimed by the Kanosha Company, upon which the town of Kanosha is located, together with all additions that may be hereafter made thereto according to law, is hereby declared to be a town by name and style of the town of Kanosha.

SEC. 2. That said town is hereby made a body corporate, and is invested with all the privileges and attributes of a municipal corporation, and may elect such officers, pass such laws, ordinances and rules, for the benefit and government of said town as shall from time to time be deemed expedient and proper, not inconsistent with the constitution of the United States, and the laws of this Territory.

SEC. 3. Whenever a majority of the legal voters of said town shall signify in writing to the Judge of Probate of said county, that they desire an organization and an election of town officers, the said judge shall within ten days' thereafter, give a written or printed notice, which he shall cause to be posted in at least three of the most public places in said town, giving ten days' notice of a meeting of the legal voters of said town, and stating the object of the meeting.

SEC. 4. The said Judge of Probate shall at the said meeting, at which time and place such officers as shall be deemed necessary and proper, for the government of said town, shall be adopted by the majority of the legal voters as aforesaid, [town] and said meeting may adjourn from time to time, till said object shall be effected.

SEC. 5. Immediately after the signification of the legal voters as provided in the last section, the said Judge of Probate shall give notice, to be posted as provided in section three of this act, for the election of such officers as are provided for by said meeting, which election shall be the first organization of the said town, and thereafter such offices may be abolished, or new offices created as the majority of the legal voters may from time to time direct by their vote, at any town election to be held thereafter.

SEC. 6. This act shall take effect from and after its passage.

Approved January 22, 1856.

 AN ACT

To Incorporate Nemaha City, in Nemaha county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the town site claimed by the Nemaha City company, upon which the town of Nemaha City is located, together with all additions that may be hereafter made thereto, according to law, is hereby declared to be a town, by the name and style of the town of Nemaha City.

SEC. 2. That said town is hereby made a body corporate, and is invested with all the privileges and attributes of a municipal corporation, and may elect such officers, pass such laws, ordinances and rules, for the benefit and government of said town, as shall from time to time be deemed expedient and proper,

not inconsistent with the Constitution of the United States, and the laws of this Territory.

SEC. 3. Whenever a majority of the legal voters of said town, shall signify in writing, to the Judge of Probate of said county, that they desire an organization, and an election of town officers, the said Judge shall within ten days thereafter, give a written or printed notice, which he shall cause to be posted in at least three of the most public places in said town, giving ten days' notice of a meeting of the legal voters of said town, and stating the object of the meeting.

SEC. 4. The said Judge of Probate shall preside at the said meeting, at which time and place such offices as shall be deemed necessary and proper for the government of said town, shall be adopted by a majority of the legal voters as aforesaid, and said meeting may adjourn from time to time till said object shall be effected.

SEC. 5. Immediately after the signification of the legal voters as provided in the last section, the said Judge of Probate shall cause notices to be posted as provided in section three of this act, for the election of such officers as are provided for by said meeting, which election shall be the first organization of the said town, and thereafter such offices may be abolished, or new offices created, as the majority of the legal voters may from time to time direct by their vote, at any town election to be held thereafter.

SEC. 6. This act shall take effect from and after its passage.

Approved January 22, 1856.

AN ACT

To incorporate the town of La Platte, in Douglas County.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the town site claimed by the La Platte company upon which the town of La Platte is located, together with all additions that may be hereafter made thereto, according to law, is hereby declared to be a town by the name and style of the town of La Platte.

SEC. 2. That said town is hereby made a body corporate and is invested with all the privileges and attributes of a municipal corporation, and may elect such officers, pass such laws, ordinances and rules for the benefit and government of said town as shall from time to time be deemed expedient and proper, not inconsistent with the constitution of the United States and the laws of this Territory.

SEC. 3. Whenever a majority of the legal voters of said town shall signify in writing to the Judge of Probate of said county that they desire an organization and an election of town officers, the said Judge shall, within ten days thereafter, give a written or printed notice which he shall cause to be posted in at least three of the most public places in said town, giving ten days' notice of a meeting of the legal voters of said town, and stating the object of the meeting.

SEC. 4. The said Judge of Probate shall preside at the said meeting at which time and place such officers as shall be deemed necessary and proper for the government of said town shall be adopted by a majority of the legal voters as aforesaid, and said meeting may adjourn from time to time till said object shall be effected.

SEC. 5. Immediately after the signification of the legal voters as provided

in the last section, the said Judge of Probate shall give notice, to be posted as provided in section 3 of this act, for the election of such officers as are provided for by said meeting, which election shall be the first organization of said town, and thereafter such offices may be abolished or new offices created, as the majority of the legal voters may from time to time direct by their vote at any town election to be held thereafter.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved January 25, 1856.

AN ACT

To locate a Territorial Road.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That William Young of Cass county, D. M. Martin of Otoe county, and A. D. Goyer of Douglas county, be, and they are hereby appointed Commissioners to view and locate a Territorial Road, to commence at Omaha City and run thence by way of the junction of the east and west forks of Papillon creek, near the old Indian village, to Cedar Island in the Platte river, thence via. Eight Mile Grove and Cedar Bluffs Mills, in Cass county, and Cowles' Mills in Otoe county, to Nebraska City.

SEC. 2. The said Commissioners, or a majority of them, shall meet at Omaha City on or before the first Monday in July, 1856, and after being duly sworn to faithfully discharge their duty as such, shall proceed to view, survey, and mark a Territorial Road, as provided for in the first section of this act, and one of said commissioners may act as surveyor.

SEC. 3. As soon, after the survey of said road, as practicable, the said commissioners and surveyor shall make a report, which, together with a plat and field notes of that part of said road pertaining to each several county, shall be returned to the office of the register of deeds of said county, whose duty it shall be to file and preserve the same in his office.

SEC. 4. The commissioners and hands employed in locating said road, shall receive for their services each two dollars per day for the time they are necessarily employed, and the surveyor shall receive four dollars per day, which shall be paid out of the county treasuries of the counties through which said road shall pass, each county paying the amount accruing by reason of the location of said road through said county; and the accounts shall be made out by said commissioners and presented to the tribunal transacting county business, which accounts shall be audited, as other accounts, and paid out of any moneys in the treasury not otherwise appropriated.

SEC. 5. When the said commissioners shall have complied with the provisions of sec. 3 of this act, the said road shall be considered, in law, as established, and be regarded and treated, in all respects, as other roads established by law.

Approved January 25, 1856.

AN ACT

To authorize P. G. Cooper, and associates, to establish and keep a Ferry across the Missouri River at Cuming City.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That P. G. Cooper, his associates and assigns, be, and are hereby authorized and empowered to establish and keep a Ferry across the Missouri River, opposite the mouth of Soldier Creek, or at any point two miles below or four miles above said point, for the term of twenty years from the passage of this act.

SEC. 2. That it shall be the duty of the said P. G. Cooper, his associates and assigns, within three months from the passage of this act, to provide good and suitable boats for the speedy and safe transportation of persons and property across said river at all suitable times.

SEC. 3. That the said P. G. Cooper, his associates and assigns, shall be allowed the following rates of ferriage at said ferry, subject to alteration by the legislature, viz:

For two horses, mules or oxen, and wagon,	-	-	-	-	-	\$1 00
For each additional pair of horses, mules or oxen,	-	-	-	-	-	25
For each horse or mule and rider,	-	-	-	-	-	30
For each horse or mule and buggy,	-	-	-	-	-	75
For each led horse or mule,	-	-	-	-	-	25
For loose cattle, per head,	-	-	-	-	-	10
For sheep and hogs, per head,	-	-	-	-	-	05
For each footman,	-	-	-	-	-	10
For each cwt. of freight,	-	-	-	-	-	10
For lumber, per m. feet,	-	-	-	-	-	2 00

SEC. 4. That if the said P. G. Cooper, or owners of said ferry, or any person or persons in their employ, shall charge and receive from any person a greater sum for ferriage than is here allowed by law, he or they shall, upon conviction thereof, forfeit and pay to the party aggrieved the sum of ten dollars for each offence, and suit for the recovery of the same shall be commenced by action of debt in the name of the party so aggrieved.

SEC. 5. That this act shall be in full force and effect from and after its passage.
Approved January 26, 1856.

AN ACT

To incorporate the Platte Valley Bank.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Joseph W. Coolidge, J. C. Campbell, Hiram Joy, S. F. Nuckolls, John Boulware, Sen., Allen A. Bradford, William B. Hall, Wm. Larimer, Jun. and Isaac L. Gibbs, their heirs and assigns are hereby appointed Commissioners, and they, or any five of them, are authorized to carry into effect, from and after the passage of this act, the establishment of a bank, to be styled and called the Platte Valley Bank, and to be located at Nebraska City, in Otoe County, Nebraska Territory, with a capital stock of one hundred thousand dollars, which may be increased at the will of the

stockholders, to any amount not exceeding five hundred thousand dollars, to be divided into shares of one hundred dollars each; and the said Company, under the above name and style, are hereby declared capable in law of issuing bills, notes, and other certificates of indebtedness, dealing in exchange, and doing all things necessary to the carrying on of a regular and legitimate banking business, and also to buy and possess property of all kinds, and to sell and dispose of the same, to contract and be contracted with, to sue and be sued, to defend and be defended against in all the courts of this Territory.

SEC. 2. That the commissioners hereby appointed shall have power to cause books to be opened for the subscription of said stock, in such manner and at such times and places as they or any five of them may appoint, that whenever Fifty Thousand Dollars is fully subscribed, then those making such subscription shall have power to choose a Board of Directors, whose duty it shall be to organize said Bank, by electing a President, Vice President and Cashier; and that, in the election of said directors and officers, each share subscribed, or then held, shall entitle the holder thereof to one vote which may be given in person or by proxy.

SEC. 3. It shall be the duty of the President or Vice President (either of which shall be competent) and Cashier to attach their respective names to all bills, or notes, issued by said Bank to circulate as currency; and that the stockholders shall be each and individually liable for the full and final redemption of such issue, payable at their Banking House, in gold or silver, and that this charter shall have an existence and be in full force, if faithfully complied with, for the term of twenty-five years from the date of its passage and becoming a law of this Territory.

SEC. 4. The stock of said Bank shall be assignable and transferable according to such rules and under such restrictions as the Board of Directors may prescribe, who shall have power at all times to make such rules and regulations as may appear for the well-being of said Bank, not inconsistent with the constitution and laws of the United States and this Territory.

SEC. 5. The Directors of said Bank shall make or cause to be made through their Cashier, under oath or affirmation, an annual report to the Auditor of the Territory or State (as the case may be) a full exhibit of the condition of said Bank, which report shall be published in three newspapers of this Territory, if they exist, by said Auditor.

SEC. 6. This act shall be in force from and after its passage.

Approved January 18, 1856.

AN ACT

To incorporate the Western University.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That S. M. Kirkpatrick, H. C. Wolph, M. B. Case, William Laird, J. Mc F. Hagood, G. W. Moore, Mathew Hugh's, and their successors be and are hereby created a body politic and corporate, by the name and style of the Western University, to be located near, or in Cassville, Cass county.

SEC. 2. For the present the aforesaid individuals shall constitute the board of trustees of said institution.

SEC. 3. The objects of said corporation shall be the promotion of the general interests of education, and to qualify students to engage in the several pur-

suits and employments of society, and to discharge honorably and usefully the various duties of life.

SEC. 4. The corporate powers hereby created, shall be such only as are essential or useful in the attainment of said object, and such as are usually conferred on similar bodies corporate, *viz.*: To have perpetual succession, to make contracts, to sue and be sued, to plead and be impleaded, to grant and receive by its corporate name, to do all other acts the same as natural persons, to accept, acquire, purchase or sell property, real personal or mixed, in all lawful ways, to use, employ, manage, and dispose of all such property and money belonging to said corporation, in such manner as shall seem to the trustees best adapted to promote the objects aforementioned, to have a common seal and to alter the same at pleasure, to make such by-laws for its regulation as shall not conflict with the Constitution and Laws of the United States or the Territory of Nebraska, and to confer on such persons as shall be considered worthy, such collegiate and honorary degrees as the nature and title of the institution indicate.

SEC. 5. The trustees of the corporation shall have authority from time to time, [to] prescribe and regulate the course of studies to be pursued in said institution and in the preparatory department attached thereto, to fix the rate of tuition, room rent and college expenses, to appoint instructors and such other officers and agents as may be necessary in managing the concerns of the institution, to define their powers, duties and employments, to fix their compensation, to displace and remove either of the instructors, officers or agents, as said trustees shall deem to the interest of the said institution to require, to fill all vacancies among said instructors, officers and agents, to purchase lands, erect suitable buildings, to purchase books and chemicals and philosophical apparatus, and other suitable means of instructions.

SEC. 6. The trustees shall have power to remove any trustee from the office of trustee for any dishonorable or criminal conduct: *Provided*, That no such removal shall take place without giving to such trustee notice of the charge exhibited against him, and an opportunity to defend himself before the board; nor unless two-thirds of the whole number of trustees shall concur in such removal; the trustees shall also have power in case of a removal from office, death, resignation or a removal out of the Territory (or State) of any one of their number, to fill such vacancy occasioned by such removal, death, resignation or removal out of the Territory (or State,) to serve until the next regular election, as hereinafter provided.

A majority of trustees shall be sufficient to constitute a quorum to do business.

SEC. 7. This corporation shall have power and authority to raise a capital stock in shares of fifty dollars each, to the amount of one hundred thousand dollars, exclusive of such lands as may be given by donation, bequest or otherwise, to be used as a college fund, and devoted exclusively to the purpose of education, and that so soon as two hundred shares or ten thousand dollars of said stock shall be subscribed the stockholders will be hereby authorized to organize and locate said institution.

SEC. 8. The trustees shall faithfully apply all funds by them collected or to be collected as hereinbefore provided, according to their best judgment, in purchasing land, erecting suitable buildings, in supporting the necessary instructors, officers and agents, in procuring books, maps, charts, globes, philosophical and chemical apparatus, to aid in the promotion of sound learning in the institution: *Provided*, That in case any donation, devise or bequest shall be applied in conformity with the express condition of the donor or deviser: *Provi-*

ded, also, That lands donated or devised as aforesaid, shall be sold or disposed of as required by the ninth section of this act.

SEC. 9. The lands, tenements and herditaments to be held in perpetuity in virtue of this act, by this corporation, shall not exceed one thousand acres: *Provided, however,* that if donations, grants or devises in lands, shall be made from time to time to this corporation, over and above one thousand acres, which may be held in perpetuity as aforesaid, the same may be received and held by said corporation for the period of ten years from the date of such donation, grant, or devise, at the end of which time, if the said lands over and above one thousand acres shall not have been sold by said corporation, then in that case the lands so donated, granted, or devised, shall revert to the donor, grantor, or the heirs of the devisor of the same, if the donor, grantor, or the heirs of the same shall so demand.

SEC. 10. The treasurer of said institution always, and all other agents, when required by the trustees, before entering upon the duties of their appointment, shall give bonds for the security of the corporation in such penal sum and with such security as the board of trustees shall approve, and all process against said corporation shall be by summons, and service of the same shall be by leaving an attested copy with the treasurer of said institution at least thirty days before the return-day thereof.

SEC. 11. The trustees of said institution shall not exceed ten, exclusive of the president, principal or presiding officer of said institution, who shall be *ex-officio* a member of the board of trustees. Said trustees shall be elected annually on the first Saturday in October, at Cassville, in Cass county, under the direction of such persons as a majority of the trustees for the time being shall appoint by resolution, to be entered on the minutes.

SEC. 12. All elections shall be by ballot, and may be given in person or by proxy, allowing one vote for each share of the capital stock, and such persons at said election having the greatest number of votes shall be trustees of said institution, and if at any election any two or more out of the ten, who have the greatest number of votes, shall have an equal number of votes, so as to leave their election undecided, then the trustees who have been duly elected shall proceed by ballot, and by a plurality determine which of said persons so having an equal number of votes, shall be trustee or trustees, so as to complete the whole number.

SEC. 13. The trustees shall elect a President and Secretary of the board of trustees from among their own body, and also appoint some suitable person the treasurer of said institution to serve for the term of one year, and until his successor shall be appointed.

SEC. 14. The said institution and its preparatory departments shall be open to all denominations of Christians, and the profession of any particular religious faith shall not be required of those who become students; all persons, however, who are idle or vicious, or whose characters are immoral may be suspended or expelled.

SEC. 15. All the real or personal estate belonging, or which may hereafter belong to said corporation, shall be exempt from taxation for any and all purposes whatever.

SEC. 16. This act to take effect from and after its passage.

Approved January 26, 1856.

AN ACT

To Incorporate the Plattsmouth Preparatory and Collegiate Institute.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That L. H. Stringfield, William Garrison, Samuel Hahn, Timothy L. Gaskill, William H. Davis, Joseph L. Sharp, Abraham Powner, Moses F. Shinn, Edward Arnold, Moses Stockin, Levi G. Todd, and their associates and successors be and are hereby created a body politic and corporate, by the name and style of the Plattsmouth Preparatory and Collegiate Institute.

SEC. 2. For five months from the first day of February, A. D., 1856, the aforesaid individuals shall constitute the board of trustees for said Institute.

SEC. 3. The objects of said corporation shall be the promotion of the general interests of education, and to qualify students to engage in the several pursuits and employments of society, and to discharge honorably and usefully the various duties of life.

SEC. 4. The corporate powers hereby created shall be such only as are essential in the attainment of said object, and such as are usually conferred on similar bodies corporate, viz: To have perpetual succession, make contracts, to sue and be sued, to plead and be impleaded, to grant and receive by its corporate name, to do all other acts the same as natural persons, to accept, to acquire, purchase or sell property, real, personal or mixed in all lawful ways; to use, employ, manage, and dispose of all such property and money belonging to said corporation, in such manner as shall seem to the trustees best adapted to promote the objects aforementioned, to have a common seal, and to alter the same at pleasure, to make such by-laws for its regulations as shall not conflict with the Constitution and laws of the United States, and to confer on such persons as shall be considered worthy such collegiate and honorary degrees as the nature and title of the institution indicate.

SEC. 5. The trustees of the corporation shall have authority from time to time, to prescribe and regulate the course of studies to be pursued in said institution, and in the preparatory departments attached thereto, and to fix the rate of tuition, room rent and collegiate expenses, to appoint instructors, and such other officers and agents as may be necessary in managing the institution, to define their powers, duties and employments, to displace and remove either of the instructors, officers or agents, as said trustees shall deem the interests of the said institution to require, to fill all vacancies of said instructors, officers and agents, to purchase lands, erect suitable buildings, to purchase books and chemical and philosophical apparatus, and other suitable means of instruction.

SEC. 6. The trustees shall have power to remove any of their number from office for any dishonorable or criminal conduct: *Provided*, That no such removal shall take place without giving to such trustee notice of the charges exhibited against him, and an opportunity to defend himself before the board, nor unless two-thirds of the whole number shall concur in such removal. The trustees shall also have power, in case of a removal from office, death, resignation, or a removal out of the Territory, [or State] to serve until the next regular election as hereinafter provided. A majority of them shall be sufficient to constitute a quorum to do business.

SEC. 7. This corporation shall have power and authority to raise a capital stock, in shares of twenty-five dollars each, to the amount of one hundred thousand dollars, exclusive of such sums as may be given by donation, bequest or otherwise, to be used as a college fund, and devoted exclusively to the pur-

pose of education, and that as soon as two hundred shares, or five thousand dollars of said stock shall be subscribed, the stockholders will be hereby authorized to organize and locate said institution.

SEC. 8. The trustees shall faithfully apply all funds by them collected, or to be collected hereinafter, according to their best judgment, in purchasing land, erecting suitable buildings, in supporting the necessary instructors, officers and agents, in procuring books, maps, charts, globes, philosophical and chemical apparatus, to aid in the promotion of learning in the institution: *Provided*, That in case any donation, devise or bequest, shall be made for particular purposes accordant with the objects of the institution, and the trustees shall accept the same, any such donation, devise or bequest, shall be applied in conformity with the express condition of the donor or deviser: *Provided, also*, that lands donated or devised as aforesaid, shall be sold or disposed of as required by the ninth section of this act.

SEC. 9. The lands, tenements, and hereditaments to be held in perpetuity in virtue of this act by this corporation shall not exceed six hundred and forty acres: *Provided, however*, that if donations, grants, or devises in lands shall be made from time to time to this corporation, over and above six hundred and forty acres, which may be held in perpetuity as aforesaid, the same may be received and held by said corporation for the period of ten years from the date of such donation, grant or devise; at the end of which time, if the said lands, over and above the six hundred and forty acres, shall not have been sold by said corporation, then in that case the said lands, so donated, granted, or devised, shall revert to the donor, grantor, or the heirs of the deviser of the same, if the donor grantor, or the heirs of the same shall so demand.

SEC. 10. The treasurer of the said institution always, and all other agents, when required by the trustees, before entering upon the duties of their office, shall give bonds for the security of the corporation, in such penal sum and with such securities as the board of trustees shall approve, and all process against said corporation shall be by summons, and service of the same shall be by leaving an attested copy with the treasurer of said institution at least thirty days before the return-day thereof.

SEC. 11. The trustees of said institution shall not exceed fifteen, exclusive of the president, principal, or presiding officer of said institution, who shall be *ex-officio* a member of the board of trustees. Said trustees shall be elected annually on the first Monday in July, at Plattsburgh, Cass county, under the direction of such persons as a majority of the trustees for the time being shall appoint by resolution, to be entered on the minutes.

SEC. 12. All elections shall be by ballot, and may be given in person or by proxy, allowing one vote for each share of the capital stock, and such persons at said election having the greatest number of votes, shall be trustees of said institution; and if at any election any two or more out of the fifteen who have the greatest number of votes shall have an equal number of votes so as to leave their election undecided, then the trustees who have been duly elected, shall proceed by ballot and by a plurality determine which of said persons so having an equal number of votes, shall be trustee or trustees, so as to complete the whole number.

SEC. 13. The trustees shall elect a President of the Board, from among their own body, and also appoint some suitable person the treasurer of said institution, to serve for the term of one year, and until his successor shall be appointed.

SEC. 14. The said institution and its preparatory departments shall be open to all denominations of Christians, and the profession of any particular religious

faith shall not be required of those who become students ; all persons, however, who are idle or vicious, or whose characters are immoral, may be suspended or expelled.

SEC. 15. All the real and personal estate belonging, or which may hereafter belong to said corporation, shall be exempt from taxation for any and all purposes whatever.

SEC. 16. This act to take effect from and after its passage.

Approved January 26, 1856.

AN ACT

To repeal an act entitled "An act to restrain Sheep and Swine from running at large, so far as relates to Douglas and Richardson Counties.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That an act entitled "An act to restrain sheep and swine from running at large, so far as relates to Douglas and Richardson counties, be, and the same is hereby repealed : *Provided*, that the citizens in each of the counties named shall have the privilege of voting upon the question on the first Monday in April next, then if a majority of the resident voters shall oppose this repeal, such repeal shall be of no force, otherwise, of full force and effect in such county ; and provided further, that if any county shall not hold such election, then this repeal stands adopted.

Approved January 25, 1856.

AN ACT

For the charter of a Bank, to be located in Bellevue, Douglas county, Nebraska Territory, to be called the Fontenelle Bank of Bellevue.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Jno. R. Sarpy, Peter A. Sarpy, Samuel Knepper, Jno. R. Cecil, L. B. Kinny, Philip J. McMahon, Leavitt L. Bowen, Jno. Clancy, their heirs and assigns, are hereby appointed commissioners, and they or any five of them are authorized to carry into effect, from and after the passage of this act, the establishment of a Bank, to be styled and called the Fontenelle Bank, and to be located at Bellevue, Douglas county, Nebraska Territory, with a capital of one hundred thousand dollars, which may be increased at the will of the stockholders, to any amount not exceeding five hundred thousand dollars, to be divided into shares of one hundred dollars each ; and the said company, under the above name and style, be and are hereby declared capable in law of issuing bills, notes and other certificates of indebtedness, dealing in exchange, and doing all things necessary to the carrying on of a regular and legitimate banking business, and also, to buy and possess property of all kinds, and to sell and dispose of the same, to contract and be contracted with, to sue and be sued, to defend to be defended against in all courts in this Territory.

SEC. 2. That the commissioners herein appointed, shall have power to cause books to be opened for the subscription of said stock in such manner, and at such times and places as they or any five of them may appoint ; that whenever

fifty thousand dollars is fully subscribed, then those making such subscription shall have power to choose a board of directors, whose duty it shall be to organize said bank by electing a president, vice-president and cashier, and that in the election of said directors and officers, each share subscribed or then held, shall entitle the holder thereof to one vote, which may be given in person or by proxy.

SEC. 3. It shall be the duty of the president or vice-president, (either of whom shall be competent) and cashier, to attach their respective names to all bills or notes issued by said bank to circulate as currency, and that the stockholders shall be each and individually liable for the full and final redemption of such issue, payable at the Banking House in gold or silver, and that this charter shall have an existence and be in full force, if faithfully complied with, for the term of twenty-five years from the date of its passage and becoming a Law of the Territory.

SEC. 4. The stock of said bank shall be assignable and transferable, according to such rules and under such restrictions as the board of directors may prescribe, who shall have power at all times to make such rules and regulations as may appear for the well being of said bank, not inconsistent with the Constitution of the United States and the Organic Law of this Territory.

SEC. 5. The directors of the bank shall make, or cause to be made, through their cashier, under oath or affirmation, an annual report to the Auditor of the Territory or State (as the case may be) a full exhibit of the condition of said bank, which report shall be published in three newspapers of this Territory by said Auditor.

SEC. 6. This act shall be in force from and after its passage.

Approved January 18th, 1856.

AN ACT

To Incorporate a Saline Company.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That John Griffith, Thomas Thompson, John Clemons, J. Mc. F. Hagood, Wm. Williams, Benjamin Williams, John J. Gilmore, Bela White, William T. Laird Joseph B. McKay, their associates and assigns are hereby created a body corporate and politic by the name and style of the Salt Spring Company.

SEC. 2. That by said name and style they may have perpetual succession, and shall be capable of suing and being sued in all courts of law and equity, may have and use a common seal, and alter the same at pleasure, and that they may be capable in law of acquiring, holding and conveying property, both real and personal, for the purpose of erecting suitable buildings, furnaces and reservoirs, to carry on the business at the Salt Springs, discovered by Thomas Thompson and others, lying west of Cass county, in Nebraska.

SEC. 3. The capital stock of said company shall be not less than three thousand dollars, and may be increased to fifty thousand dollars.

SEC. 4. The said company shall have power to divide the capital stock into as many shares as they may decide proper, and shall have power to do all things incident to the nature of the incorporation.

SEC. 5. The object of the corporation is to establish Salt Works, at, or near the aforesaid Salt Springs and to transact such other business as may be necessary to carry on the business of said company.

SEC. 6. The Company shall have the power to make such rules and regulations for their own government as they may deem proper, not inconsistent with the Laws of the United States and this Territory.

SEC. 7. The stock of said company shall be considered in law, personal property, and shall be assignable and transferable only upon the books of the company: *Provided*, This charter shall not interfere with any charter heretofore granted.

SEC. 8. This act to take effect and be in force from and after its passage.

Approved January 26, 1856.

AN ACT

To locate and establish a Territorial Road from Desoto, in Washington county, to Fontenelle, in Dodge county.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That P. C. Sullivan, of Washington county, Thomas Gibson and William H. Davis, of Dodge county, be, and they are hereby, appointed commissioners to locate and establish a Territorial road from Desoto, in Washington county, to Fontenelle, in Dodge county.

SEC. 2. That said commissioners, or a majority of them, shall meet on or before the first Monday in July, 1856, at Desoto, in Washington county, and proceed to lay out said road in accordance with the provisions of this act.

SEC. 3. That said commissioners shall receive three dollars per day, each, for their services while engaged in laying out said road, and shall have power to employ all necessary help in surveying and making of said road.

SEC. 4. That all reasonable expenses incurred in accordance with the provisions of this act, shall be defrayed in equal proportions by the counties through which the said road shall run, as soon as a sufficient sum be in the Treasury of said counties.

SEC. 5. That the said commissioners shall make a report of their doings and furnish a map of the road to the Probate Judge of each of the aforesaid counties, all of which shall be filed and recorded in the Register's office thereof.

SEC. 6. That this act shall take effect from and after its passage.

Approved January 23rd, 1856.

AN ACT

Entitled An Act concerning Weights and Measures.

SECTION 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the standard of weights and lineal measure shall be the same as that established by Act of Congress for the several States, and that the half bushel, peck, gallon, half gallon and quart of this Territory shall be the same as those established by act of Congress.

SEC. 2. A Bushel of the respective articles enumerated in this section shall be of the following weight, viz :

Of Wheat,	-	-	-	-	-	-	-	-	-	-	Sixty Pounds.
" Corn,	-	-	-	-	-	-	-	-	-	-	Fifty-two "
" Rye,	-	-	-	-	-	-	-	-	-	-	Fifty-six "
" Oats,	-	-	-	-	-	-	-	-	-	-	Thirty-six "
" Barley,	-	-	-	-	-	-	-	-	-	-	Forty-eight "
" Potatoes.	-	-	-	-	-	-	-	-	-	-	Sixty "
" Beans,	-	-	-	-	-	-	-	-	-	-	" "
" Clover Seed,	-	-	-	-	-	-	-	-	-	-	" "
" Hemp,	-	-	-	-	-	-	-	-	-	-	Forty-five "
" Timothy,	-	-	-	-	-	-	-	-	-	-	" "
" Dried Apples,	-	-	-	-	-	-	-	-	-	-	Twenty "
" " Peaches,	-	-	-	-	-	-	-	-	-	-	Thirty-two "
" Onions,	-	-	-	-	-	-	-	-	-	-	Fifty-six "
" Salt,	-	-	-	-	-	-	-	-	-	-	Fifty "
" Blue Grass Seed,	-	-	-	-	-	-	-	-	-	-	Fourteen "
" Castor Beans,	-	-	-	-	-	-	-	-	-	-	Fifty-five "
" Buckwheat,	-	-	-	-	-	-	-	-	-	-	Fifty "
" Flax Seed,	-	-	-	-	-	-	-	-	-	-	Fifty-six "

SEC. 3. Any person who shall knowingly keep false weights or measures, and shall buy and sell any article or articles thereby, shall forfeit and pay to the injured party ten dollars for each offence, together with damages, to be ascertained by law, which may be recovered by action before any justice of the peace of the proper county, and upon conviction shall pay a fine of not less than five, nor more than twenty-five dollars, to be recovered before any court having competent jurisdiction, which fine shall be appropriated to the use of common schools in the proper county.

Approved January 26, 1856.

William M. Mott

PART THIRD.

RESOLUTIONS, JOINT RESOLUTIONS, AND MEMORIALS.

RESOLUTION.

Resolved by the Council and House of Representatives of the Territory of Nebraska, That Hadley D. Johnson be, and hereby is, declared duly elected Public Printer for the Territory of Nebraska for the term of one year.

Approved January 15th, 1856.

JOINT RESOLUTION.

Resolved, That Hadley D. Johnson be, and hereby is, required forthwith to give bonds in the sum of \$10,000 for the faithful and prompt performance of his duties as Public Printer to the Territory of Nebraska.

Resolved, That the said Hadley D. Johnson having given bonds as above, the Secretary shall be, and hereby is, requested to pay him at the legal rates prescribed by the Department at Washington, which, when paid, is in full satisfaction of all claims for doing said work.

Approved January 25th, 1856.

JOINT RESOLUTION.

Resolved by the Council and House of Representatives of the Territory of Nebraska, That Hadley D. Johnson, Public Printer, be, and is hereby, authorized to print 1,000 copies of all the laws and joint resolutions passed by the present session of the Legislative Assembly, and 1,000 copies of the journals of each House. That he be ordered, also, to prefix to each copy of the laws a copy of the Constitution of the United States and the Organic Law of this Territory; and, also, that the Secretary of the Territory is hereby required to pay said printer, for doing said work, the prices allowed by the Secretary of the United States Treasury, which, when paid, shall be in full satisfaction of all claims for doing said work.

Approved January 26, 1856.

JOINT RESOLUTION AND MEMORIAL

Relative to grant of land to University at Fontenelle.

Be it resolved by the Council and House of Representatives of the Territory of Nebraska, That the Secretary of the Territory forward the following Memorial to our Delagate in Congress, and ask his influence in forwarding the adoption of the same in the present Congress assembled.

*To the Honorable the Senate and House of Representatives
of the United States in Congress assembled :*

Your memorialists, the Council and House of Representatives of the Territory of Nebraska, would respectfully represent that the interests of this infant Territory will be greatly enhanced by any and every means that may be adopted to promote the advancement of education in our midst, in consideration of which, we would ask your honorable body to make an appropriation to the Nebraska University at Fontenelle, of ten sections of land, to be applied by the trustees of said University, to educational purposes ; and, also, an appropriation of the sum of five thousand dollars towards the erection of said University buildings, and your memorialists will ever pray, &c., &c.

Approved January 25th, 1856.

 JOINT RESOLUTION

Relative to the taking effect of the Laws.

Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That all laws reported by the Còde Commissioners, which may be passed by the present Legislative Assembly, shall take effect, and be in force, from and after the first day of July, A. D. 1856 ; and, further, that the Territorial Printer have the said laws ready for delivery on or before the first day of July, 1856.

Approved January 26th, 1856.

 JOINT RESOLUTION.

Be it resolved by the Council and House of Representatives of the Territory of Nebraska, That the Secretary of the Territory be requested to forward the following memorial to our delegate in Congress urging him to ask the passage of a bill during the present session of Congress, in conformity with the following memorial :

*To the Honorable the Senate and House of
Representatives in Congress assembled.*

Your memorialists, the Legislative Assembly of the Territory of Nebraska, respectfully represent to your honorable body that petitions have been presented

from various locations in this Territory, where the Government surveys are being made, representing that the town sites and individual claimants are located on some of the lands reserved for school purposes (that is, on sections sixteen and thirty-six,) and it being seen that all our present settlers have located in good faith under the organic act, and are legally and rightfully entitled to every privilege as pre-emption claimants, without a possibility of knowing previous to the surveys where the reservation for school purposes would be, and further, that many of the settlers have made valuable improvements and comfortable homesteads on said lands, in the full belief, and with the understanding that said land in this Territory would be conveyed to all actual settlers, at the price stated by the general government—one dollar and a quarter per acre—we would therefore ask your honorable body to pass an act during the present session of Congress to meet all cases of this character throughout the Territory, by allowing all settlers upon said lands to retain their rights as pre-emption claimants to the same individually or collectively; and also, that your honorable body will appoint commissioners to select lands in lieu thereof, in all the townships where said reserved lands are thus improved, previous to the general survey.

And your memorialists would further ask your honorable body to convey to this Territory all of sections sixteen and thirty-six, reserved for school purposes in every township under the present survey.

Your memorialists feel a deep interest in the promotion of a general system of education, and the diffusion of knowledge among all classes; and laboring under the difficulties incident to all new Territories in their first settlements, believe, that by being in possession of the lands reserved for said purpose, they might be enabled to apply a portion of the same in raising a fund for school purposes, while we have no other resources by which to raise said funds.

And your memorialists in duty bound, will ever pray, etc.

Approved January 26, 1856.

MEMORIAL AND JOINT RESOLUTION

For the Removal of Indians, and indemnity of Citizens for losses sustained by a former Location of the Omaha Indians.

*To the Senate and House of Representatives of the
United States in Congress assembled:*

Your memorialists the Legislative Assembly of the Territory of Nebraska, would respectfully represent, that the Omaha Indians having been removed to that part of the Territory of Nebraska, known as Blackbird Hills, and maintaining their preference to be located at some point in the interior; and if practicable, conjointly with the Pawnee Indians; and as justice and the interest and welfare of these Indians and of the citizens of the Territory demand such location at the earliest practicable moment, your memorialists therefore ask that measures be taken by your honorable body, which shall effect the speedy removal and permanent location of these Indians. And also, that for damages sustained by those settlers in the Territory, who were driven from their homes by means of the removal of the Omaha Indians to Blackbird county, who show satisfactory evidence of being entitled to it, individual appropriations be made for their indemnification.

Resolved, That our delegate in Congress be requested to use his best exertions to procure the above, as asked for in the foregoing memorial; and that the secretary of the Territory forward a copy thereof to our delegate in Congress.

Approved January 23, 1856.

JOINT RESOLUTION AND MEMORIAL

Asking the construction of a Territorial Road from Kearney City, in Nebraska Territory, to New Fort Kearney, in said Territory.

*To the Senate and House of Representatives of the
United States, in Congress assembled.*

Your memorialists, the Council and House of Representatives of the Territory of Nebraska, would respectfully ask, that an appropriation of twenty thousand dollars be made by Congress, to aid in the construction of a Territorial road from Kearney city, in the Territory of Nebraska, to New Fort Kearney in said Territory, and as in duty bound, your memorialists will ever pray, etc.

Resolved, That our delegate be requested to use all honorable means to bring this subject to the favorable consideration of Congress.

Approved January 25, 1856.

PREAMBLE AND JOINT RESOLUTION

In relation to amending the Organic Act.

WHEREAS, It is and has been customary and legal in the States and Territories to make apportionment of representation based upon population and not upon the number of voters; and

WHEREAS, By the law of Congress organizing this Territory, (contrary to all precedent) the apportionment of representation is based upon the number of voters; and

WHEREAS, We believe that the above named provision of the organic Act is calculated to make an unfair and unjust apportionment; and

WHEREAS, It has already caused an unfair and unjust (though legal) apportionment of representation in the legislative assembly, and is likely to continue the same unless the organic act be amended: therefore,

Resolved by the Council and House of Representatives of the Territory of Nebraska, That our delegate in Congress is hereby respectfully solicited to use his best endeavors to have that portion of sec. 4 of the organic law relating to apportionment, so amended as to read as follows:

"The number of representatives may be increased by the legislative assembly from time to time, in proportion to the increase of white population: *Provided*, That the whole number shall never exceed thirty-nine; an apportionment shall be made as nearly equal as practicable among the several counties or districts, for the election of the council and representatives, giving to each section of the Territory representation in the ratio of its white population as nearly as may be."

Approved January 25, 1856.

JOINT RESOLUTION AND MEMORIAL

Asking construction of a Military Road from Fort Leavenworth to Fort Pierre.

*To: Honorable the Senate and House of Representatives
of the United States, in Congress assembled:*

Your memorialists, the Council and House of Representatives of the Territory of Nebraska, respectfully represent that the interest of this Territory and our sister, Kansas, would be greatly advanced by the construction of a military road from Fort Leavenworth to Fort Pierre, for, thereby, a direct communication would be opened between the twin Territories, and, also, betwixt the two great sections of our own Territory that are separated by the Platte river, a barrier almost impassable, for it cannot be ferried or bridged except at an immense expense, on account of the great width of said stream, it being from half a mile to three miles wide, and full of movable sand-bars, rendering it un-navigable. Lastly, such a road would be a national thoroughfare whereon military supplies could be transported much more expeditiously than on the Missouri river, the navigation of which is generally very uncertain, and for nearly six months of the year, impassable; therefore

Be it resolved by the Council and House of Representatives of the Territory of Nebraska, That our delegate in Congress be, and hereby is requested to use all honorable means to bring this subject to the favorable consideration of Congress, and obtain an appropriation of one hundred and fifty thousand dollars therefor.

And be it further resolved, That the Secretary of the Territory be requested to transmit a copy of the foregoing resolution to our delegate in Congress.

Approved January 25, 1856.

 JOINT RESOLUTION.

Resolved by the Council and House of Representatives, That we hereby respectfully and earnestly solicit His Excellency, Governor Izard, to attend the present session of the United States Congress and advance the passage of appropriations for the Territory as recommended in his able message, and that the expense of the trip, if not allowed by the United States, shall be paid from the territorial revenue.

We urgently submit to his Excellency the propriety and necessity of this measure, believing, as we do, that his prompt presence at Washington at the opening of the present session will do more than all other efforts to secure to us the appropriations which will so increase the prosperity of our people.

Approved January 16, 1856.

JOINT RESOLUTION

Requesting Congress to make an appropriation to defray the expenses incurred in defence of the frontier settlements against Indians, and to grant a donation of land to the soldiers engaged therein.

Resolved by the Council and House of Representatives of the Territory of Nebraska, That, whereas, Indian difficulties having occurred on our immediate frontier during the summer and autumn of the past year, and the lives and property of the peaceful settlers have been destroyed by hostile Indians, and other depredations committed, which made it imperative upon the executive of the Territory to take active measures for its defence against further aggressions; *therefore,* the Congress of the United States is hereby most urgently requested to make an appropriation as early as practicable, for defraying the expenses thus incurred, and to grant to each of the officers and men regularly mustered into service for such defence, and continued therein for a period of fourteen days, a donation of one hundred and sixty acres of land.

Resolved, That the Secretary of the Territory be, and is hereby, requested to forward an attested copy of the foregoing resolution to our delegate, to be presented to the consideration of Congress.

Approved January 26, 1856.

JOINT RESOLUTION AND MEMORIAL.

*To the Honorable the Senate and House of Representatives
of the United States in Congress assembled :*

Your memorialists, the Legislative Assembly of the Territory of Nebraska, would respectfully represent that the interests of this Territory, and especially that of the southern portion, would be greatly promoted by the creation of an additional Land District south of the Platte river.

Your memorialists would further recommend that the land office for said district be located at Brownville, Nemaha county, which point, from its central position, will best accommodate the inhabitants of said district and others dealing in public lands; therefore

Be it resolved by the Council and House of Representatives of the Territory of Nebraska, That our delegate in Congress be, and he is hereby requested to use his best efforts to have the above request consummated; and that the Secretary is hereby requested to furnish our delegate in Congress with a copy of this joint resolution and memorial.

Approved January 21, 1856.

JOINT RESOLUTION.

Resolved, by the Council and House of Representatives [of the Territory of Nebraska,] That the County Clerk shall, on application, deliver to each officer of his county one volume each of the Statutes passed by the Legislative Assembly of the Territory of Nebraska for the years 1855 and 1856.

Approved January 23, 1856.

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